120-86

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

No. 382. 125

Fannie M. Roberts, late of

FANNIE M. COOK, APPELLANT,

vs.

THE PHŒNIX MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF KENTUCKY.

FILED OCTOBER 10, 1883.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1885.

No. 382.

FANNIE M. COOK, APPELLANT,

vs.

THE PHŒNIX MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF KENTUCKY.

INDEX.

	Original.	Print.
Caption	1	1
Order filing transcript from State court	1	1
Transcript from State court	2	1
Caption	2	1
Petition	2	1
Exhibit "A"—Assignment of policy No. 66488 by A. B. Cook to Fannie M. Cook, Sept. 19, 1872	10	4
B—Proof of death	10	4
C—Receipt for proof of death	14	6
D—Draft and protest	15	6
Summons	17	7
Sheriff's return	18	8
Election of judge *pro tem.*	18	8
Order to quash service of summons	19	8
Order for removal	20	8
Affidavit of Insurance Co.	21	9
Petition for removal	24	10
Bond for removal	25	11
Clerk's certificate	28	11
Demurrer to petition	28	12

JUDD & DETWEILER, PRINTERS, WASHINGTON.

	Original.	Print.
Order sustaining demurrer	29	12
Opinion	30	12
Bill of complaint	31	13
Subpœna	38	15
Proof of service of subpœna	39	16
Answer of Insurance Co.	39	16
Exhibit "P P P"—Insurance policy No. 66488	63	24
"Q Q Q"—Application for assurance	67	25
"R R R"—Draft of Insurance Co. to A. B. Cook, June 4, 1880	78	29
Replication to answer of Insurance Co.	79	30
Answer of A. B. Cook	80	30
Replication to answer of A. B. Cook	86	32
Hearing	87	33
Decree	88	33
Appeal allowed	88	33
Evidence for complainant	89	33
Testimony of A. B. Cook	89	33
Dr. G. W. Ronald	133	49
Dr. L. J. Frazer	140	52
J. W. Edwards	150	56
Dr. H. C. Miller	171	63
Dr. Clay B. Blackburn	178	65
Miss Mamie Roberts	185	68
Mrs. L. L. Hickman	199	72
Evidence for defendant	206	75
Testimony of Dr. A. W. Goodale	206	75
John A. Harrison	256	92
W. W. Morris	263	94
Exhibit "W. W. M. 2"—Letter of A. B. Cook to W. W. Morris, March 13, 1880	366	130
"W. W. M. 3"—Application for assurance	367	130
"W. W. M. 4"—Envelope	375	133
"W. W. M. 5"—Letter of W. W. Morris to W. G. Harrison, December 29, 1877	375	134
Testimony of John M. Holcombe	376	134
Exhibit A—Telegram of A. W. Goodale to Insurance Co., June 13, 1880	393	139
B—Telegram of Insurance Co. to A. W. Goodale, June 14, 1880	393	139
C—Letter of A. W. Goodale to J. M. Holcombe, Nov. 25, 1879	394	140
C—Letter of J. M. Holcombe to A. W. Goodale, Dec. 1, 1879	398	141
D—Letter of J. M. Holcombe to W. W. Morris, August 1, 1877	400	142
D—Letter of J. M. Holcombe to W. W. Morris, Sept. 22, 1877	401	142
D—Letter of J. M. Holcombe to W. W. Morris, Dec. 12, 1877	401	142
Testimony of Ashabel W. Barrows	403	143
Aaron C. Goodman	408	145

	Original.	Print.
Exhibit E—Letter of A. B. Cook to A. C. Goodman, Oct. 15, 1879	410	145
F—Letter of J. M. Holcombe to A. B. Cook, Oct. 18, 1879	413	146
Testimony of Harry Cornwell	415	147
Exhibit A—Letter of J. M. Holcombe to W. W. Morris, August 1, 1877	420	149
B—Letter of J. M. Holcombe to W. W. Morris, August 1, 1877	420	149
Clerk's certificate	421	149

1 *Caption. Order Filing Transcript of State Court.*

Proceedings of the circuit court of the United States for the district of Kentucky at a regular term begun and held at Louisville on Monday, February 19th, 1883.

Present: The Hon. John W. Barr, judge of the United States for the district of Kentucky.

FANNIE M. COOK, Complainant,

vs.

THE PHŒNIX MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONN., Defendant.

Be it remembered that heretofore, to wit, on Monday, October 3rd, 1881, came the defendant, by A. E. Willson, its counsel, and filed copies of the process and other proceedings had in the Jefferson court of common pleas in this case. Thereupon the defendant entered its appearance herein, and, on its motion, it is ordered that this case be placed on the docket of this court and that it be tried here in its regular order. The defendant, by its counsel, filed its demurrer to the plaintiff's petition.

2 The copies of the process and other proceedings above referred to are as follows:

STATE OF KENTUCKY, *Jefferson County:*

Pleas before the Hon. Emmet Field, judge *pro tem.* of the Jefferson court of common pleas, held at the court-house, in the city of Louisville, on the 5th day of April, 1881.

FANNIE M. COOK, Plaintiff,

vs.

PHŒNIX MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONN., Defendant.

Be it remembered that heretofore, to wit, on the 2nd day of March, A. D. 1881, the plaintiff, by her counsel, filed in the clerk's office of the Jefferson court of common pleas a petition and exhibit, which petition is in words as follows:

Petition.

Jefferson Court of Common Pleas.

FANNIE M. COOK, Plaintiff,

vs.

PHŒNIX MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONN., Defendant.

The plaintiff, Fannie M. Cook, states that the defendant,

3 The Phœnix Mutual Life Insurance Company of Hartford, Connecticut, is a corporation created by the laws of Connecticut, with power to contract, sue, and be sued in its corporate name; that on the 27th day of August, 1872, the said defendant then being authorized to make contracts and do business in Kentucky, made

and issued its policy, No. 66488, which was to take effect and become binding when countersigned by its agent, W. W. Morris, agent of defendant at Louisville, Kentucky, and delivered to A. B. Cook, the assured named therein, and which said policy was countersigned by said Morris and delivered to said Cook, to wit, at Louisville, Kentucky, on the 27th day of August, 1872, when and where it took effect, wherein and whereby the said defendant then and there assured to said A. B. Cook and to his assigns the life of William G. Harvison, of Louisville, in the county of Jefferson, State of Kentucky, in the amount of twenty thousand dollars, for the term of his natural life, which said sum the said defendant, in and by its said
4 policy, in consideration of the representations made to it in the application for said policy and of the sum of one thousand and twenty-four dollars to it duly paid by said A. B. Cook, creditor of said Harvison, one-half thereof in cash, and the balance secured by the note of said Cook, payable twelve months after the date thereof, with interest annually in advance at the rate of six per cent. per annum, and the annual payment by said Cook of like amount, less the accrued dividends, one-half thereof in cash and the balance secured by note as aforesaid, and the annual payment of interest thereon as aforesaid by said Cook in every year during the continuation of said policy, then and there and thereby promised and agreed to pay to the said A. B. Cook, or its assigns, at its office in Hartford, Connecticut, in ninety days after due notice and proof of the death of the said Wm. G. Harvison, any amount of indebtedness to said Co. on account of said policy being first deducted there-
5 from. The said application and the said policy are now in the hands of said defendant, and plaintiff cannot file them herewith, or state with more particularity the terms and conditions therein contained, and she asks that said defendant be required to file the same in this action.

2. Plaintiff states that all the terms and conditions of said policy to be performed by the assured and said Harvison have been fully kept and performed, and that all of the said annual premiums have been duly and promptly paid and secured to said defendant as provided in said policy, and the interest has been duly and promptly paid by the assured to said defendant as provided in said policy.

3. Plaintiff further states that the said Wm. G. Harvison died at Louisville, Kentucky, on the 25th day of August, 1880, of hepatization of the lungs.

4. Plaintiff further states that the said policy was taken out by said A. B. Cook for the sole benefit of plaintiff, and to create for her a separate estate, of which the defendant had full knowledge
6 at the time, and she says that on the 19th day of September, 1872, a few days after said policy was delivered to said A. B. Cook by said defendant, the said Cook executed and delivered to her the following writing: "This instrument of writing certifies that the policy No. 66488 I have taken out on the life of Wm. G. Harvison for twenty thousand dollars ($20,000) in the Phœnix Mutual Life Insurance Co. of Hartford, Connecticut, was taken out by me for the sole benefit of my wife, Fannie M. Cook; and I hereby declare that

the above-mentioned life policy of $20,000 and the money secured thereby is given and assigned to my said wife as separate estate, and shall continue to be the separate estate of my said wife, and, whether the said Harvison dies before or after me, my said wife shall have and receive and hold said money as her separate estate and for [her] separate and sole benefit, to dispose of as she may think proper," which said writing she files herewith as part hereof, marked A, and she says that at the same time and place the said A. B. Cook
7 delivered to her said policy to hold and keep as her own, and the said policy and money became her separate property.

5. Plaintiff further states that after the death of said Harvison, to wit, on the 1st day of September, 1880, she caused the following notice to be given to the defendant:

LOUISVILLE, KY., *Sep. 1st*, 1880.

To the Phœnix Mutual Life Insurance Co. of Hartford, Connecticut, A. C. Goodwin, president:

This is to give you notice that Wm. G. Harvison, whose life you insured in policy No. 66488, died at Louisville, Kentucky, on the 25th day of August, 1880. The right to the sum insured thereon, $20,000, vested in Mrs. Fannie M. Cook, wife of A. B. Cook, to whom the policy issued, which right remains in her. She is desirous of furnishing you with such proofs of death as you may require. Will you therefore be so kind as to forward to me the blanks in the form you require them?

Yours, truly,

M. MUNDY,
Att'y for Fannie M. Cook.

8 6. Plaintiff further says that, the said defendant having failed and declined to comply with her said reasonable request, *that* she had prepared due and proper proofs of the death of said Harvison, a copy of which is appended hereto as part hereof, marked B, which she forwarded to said defendant by mail to Hartford, Connecticut, and which said defendant received from the mail on the 29th day of September, 1880, and for which it executed and delivered to the Post Office Department a receipt, which is appended hereto, marked C.

7. Plaintiff further states that afterwards, to wit, on the 10th day of January, 1881, she demanded of defendant payment of $17,340, being the amount of said policy less the notes given for parts of the premium, at its office in Hartford, Connecticut, by drawing her draft on said defendant, payable at its office in Hartford, Connecticut, and which was duly presented to defendant at its said office and payment thereof demanded, which it refused on the 14th day of
9 January, 1881, and which draft making said demand was then and there duly protested for non-payment, and for which protest she paid $2.06. She files the said draft and protest herewith as part hereof, marked D.

8. Plaintiff further states that her said husband, A. B. Cook, refuses to unite with her in this action; wherefore she sues alone in her own name; and she prays judgment herein against said defend-

ant in the sum of seventeen thousand three hundred and forty dollars, with interest from the 1st day of January, 1881, and for $2.06, costs of protest, and for all proper relief.

M. MUNDY,
Att'y for Pl'ff.

Fannie M. Cook, being duly sworn, says she believes the statements in the foregoing petition to be true.

FANNIE M. COOK.

Sworn to and subscribed before me by Fannie M. Cook, pl'ff, this 1st day of March, 1881.

R. B. HAWKINS,
N. P., J. C., Ky.

The instrument of writing referred to in the petition,
10 marked "A," is in words as follows:

EXHIBIT "A."

This instrument of writing certifies that the policy No. 66488 I have taken out on the life of Wm. G. Harvison for twenty thousand ($20,000) dollars in the Phœnix Mutual Life Insurance Co. of Hartford, Connecticut, was taken out by me for the sole benefit of my wife, Fannie M. Cook; and I hereby declare that the abovementioned life policy of $20,000 and the money secured thereby is given and assigned to my said wife as separate estate, and shall continue to be the separate estate of my said wife; and whether the said Harvison dies before or after me my said wife shall have and receive and hold said money as her separate estate and for her separate and sole benefit, to dispose of [as] she may think proper.

Witness my hand this 19th day of September, 1872, [at] Louisville, Ky.

A. B. COOK.

STATE OF KENTUCKY, *Jefferson County:*

I, Cary B. Blackburn, M. D., being duly sworn, state that I
11 am a practicing physician and that I attended professionally Wm. G. Harvison in his last illness, and that I was present and assisted at the autopsy after his death. He died at the St. Joseph's infirmary at Louisville, Kentucky, on the 25th day of August, 1880, of hepatization of the lungs, of which he had suffered for more than four months. I am in no wise related to him and have no interest in any policy of insurance on his life.

CARY B. BLACKBURN,

Sworn to and subscribed before me by Dr. Cary B. Blackburn this 25th day of September, 1880.

JOSEPH CLEMENTS,
Justice of the Peace.

STATE OF KENTUCKY, } ss:
Jefferson County, }

I, R. C. Davis, being duly sworn, state that I was a disinterested acquaintance of Wm. G. Harvison, now dec'd; that I was not of kin to him, and have no interest in any insurance policy on his
12 life, and that he died at the St. Joseph's infirmary in Louisville, Ky., on the 25th day of August, 1880, and that he was the same William G. Harvison whose life was insured in the Phœnix Mutual Life Insurance Company of Hartford, Conn., in policy No. 66488, issued to Dr. A. B. Cook, creditor.

R. C. DAVIS.

Sworn to and subscribed before me by R. C. Davis this 25th day of September, 1880.

JOS. CLEMENTS, *J. P.*

STATE OF KY., } ss:
Jefferson Co., }

I, John C. King, being duly sworn, state that I am engaged in the business of undertaking in the city of Louisville, Ky., and that on the 26th day of August, 1880, I buried in Louisville in the Cave Hill Cemetery the remains of Wm. G. Harvison, the brother-in-law of Dr. A. B. Cook, who died on the 25th day of August, 1880, at the St. Joseph's infirmary, at Louisville, Ky.

J. C. KING.

Sworn to and subscribed before me by John C. King, undertaker, this 25th day of Sept'r, 1880.

JOS. CLEMENTS,
Justice of the Peace, Jeff. Co., Ky.

13 STATE OF KENTUCKY, } ss:
Jefferson County, }

I, John Ryans, being duly sworn, state that I was the intimate friend of Wm. G. Harvison for many years previous to and up to the time of his death. For many years he had been in the habit of occasionally drinking, and continued said habit up to about March, 1880, before his death, when he abandoned said habit entirely. I did not regard his said habit intemperate.

JOHN RYANS.

Sworn to and subscribed before me by John Ryans this 27th day of Sept'r, 1880.

JOS. CLEMENTS,
N. P., Jeff. Co.

I, Wm. E. Loran, clerk of the Jefferson county court, do certify that Joseph Clements, J. of P., before whom the foregoing affidavits were taken, is a magistrate and duly authorized by law to administer the foregoing oaths.

Witness my hand and the seal of my said court this 28th day of Sept'r, 1880.

W. E. LORAN,
C'k Jeff. Co. C't, K'y.

14 When the registered letter or parcel accompanying this card is delivered the postmaster will require signature to the receipt on the other side, also on his record of registered deliveries, and mail this card, without address, below.

A penalty of $300 is fixed by law for using this card for other than official business.

POST OFFICE DEPARTMENT.
Official business.

Post office at— Hartford, Oct. 2, 11 a. m., Conn.

Return to (name of sender) M. Mundy.
Court place, post office, Louisville, county of Jefferson, State of Kentucky.
Street and number or post-office box, ——.
Registry return receipt sent Sept'r 29, 1880.
Reg. No., 4839. From post office at Louisville, Ky.
Reg. letter }
Reg. parcel } Addressed to Phœnix Mut. Life Ins. Co.
Post office at Hartford, Ct.

After obtaining receipt below the postmaster will remail this card, without cover and without postage, to address on the other side.

Received the above-described registered* { Letter. / Parcel.
Sender's name on other side.
Sign on dotted lines to the right.

PHŒNIX M. L. I. CO.
L. H. HUTCHINSON.

15 When delivery is made to other addresses the name of both addressee and recipient must appear.

---

*Erase letter or parcel according to which is sent.

Draft is as follows:

46786.

$17,340. LOUISVILLE, KY., *January* 10, 1881.

In current funds pay to the order of German Security Bank seventeen thousand three hundred and forty dollars, value received, and charge to the account of the loss under your policy, No. 66488, on life of W. G. Harvison, dec'd, the benefits of which are to—

FANNIE M. COOK.

To Phœnix Mutual Life Ins. Co., Hartford, Conn.

[Written across the face:] Protested for non-payment January 14th, 1881. John F. Burt, notary public.

16 UNITED STATES OF AMERICA.

STATE OF CONNECTICUT, *City and County of Hartford:*

Be it known that on the fourteenth day of January, in the year of our Lord one thousand eight hundred and eighty-one, at the request of the American National Bank of Hartford, I, John F. Burt, a notary public, duly commissioned and sworn, residing in the city of Hartford aforesaid, did present the original draft hereunto annexed to the Phœnix Mutual Life Ins. Co., and demanded payment thereof, which was refused. They say they have received no advice of draft.

Whereupon I, the said notary, at the request aforesaid, did protest and do hereby publicly and solemnly protest against the makers, drawers, and endorsers of the said draft and all others concerned for all exchange, re-exchange, all costs, damages, and interest incurred or to be incurred for want of payment of the same.

And I, the said notary, do hereby certify that the same day
17 I deposited in the post office at Hartford, Conn., prepaid notice of protest of said draft addressed as follows, viz:

Fannie M. Cook, enclosed to German Security Bank; German Security Bank, Louisville, Ky.; Connecticut National Bank, New York, N. X.

Thus done and protested in the city of Hartford aforesaid, and my notarial seal affixed the day and year above written.

[SEAL.] JOHN F. BURTY,
Notary Public.

Fees:

Noting protest	$0 25
Entering	50
Recording	25
Affixing seal	25
Notices	75
Postage	06
	$2 06

The Commonwealth of Kentucky to the sheriff of Jefferson county, Greeting:

You are commanded to summon — Phœnix Mutual Life Insurance Company of Hartford, Conn., No. 21433, to answer a petition filed against it in the Jefferson court of common pleas by Fannie M. Cook, and warn it that upon its failure to answer within twenty days from the service hereof the petition will be taken
18 for confesssed, or it will be proceeded against for contempt, and you will make due return of this summons as executed.

Witness John S. Cain, clerk of said court, this 7th day of March, 1881.

JOHN S. CAIN, *Clerk.*

Came to hand March 7, 1881, at 3 o'clock p. m., and executed March 7, 1881, on the Phœnix Mutual Life Insurance Company by delivering to W. W. Morris, the general agent of said company, a true copy of the within summons, also by delivering to Dr. A. W. Goodale, general agent of said company, on the 8th day of March, 1881, a true copy of the within summons.

S. S. HAMILTON, *S. J. C.*,
By E. H. MEDDIS, *D. S.*

And at a Jefferson court of common pleas, held at the court-house in the city of Louisville, Jefferson county, Kentucky, on the 7th day of March, 1881, the Hon. Henry J. Stites, judge of the Jefferson court of common pleas, being necessarily absent on account of sickness, and the Hon. Alfred T. Pope, vice chancellor, being also necessarily absent on account of sickness, an election for judge *pro tem.* of the Jefferson court of common pleas was held by the clerk of said court, and the Hon. Emmet Field, a practicing attorney of said court, receiving a majority of all the votes of the members of the bar of the city of Louisville and Jefferson county that were present *that were casted*, was duly declared elected judge *pro tem.* of said court, and took the oaths required by the constitution and laws of the Commonwealth of Kentucky, and presided, and has continuously presided as judge *pro tem.* of the Jefferson court of common pleas ever since.

19

And afterwards, to wit, at a Jefferson court of common pleas held at the court-house thereof, on the 5th day of April, 1881—present, Hon. Emmet Field, judge *pro tem.*—the following orders were entered:

FANNIE M. COOK, Pl'ff,
vs.
PHŒNIX MUTUAL LIFE INSURANCE COMPANY, Def't.

This day came the parties, by their counsel, and the defendant moved the court to quash the service of summons herein on A. W. Goodale, as agent of the defendant, and in support of said motion filed the affidavit of John M. Holcombe; to which motion the plaintiff objects. Said motion being heard was submitted, and the court being advised orders said motion be sustained. It is, therefore, ordered by the court that the service of summons on A. W. Goodale, as the agent of the defendant in this action, be, and the same is hereby, quashed; to all of which the plaintiff excepts.

20

The defendant, by counsel, then moved the court and offered and tendered a petition for the removal of this cause into the circuit court of the United States for the district of Kentucky; to the filing of which the plaintiff objects. Said motion being heard was submitted, and the court being advised — said motion be sustained, and orders said petition be now filed, which is done; to all of which the plaintiff excepts.

The defendant, by counsel, then moved the court to remove this cause to the circuit court of the United States for the district of Kentucky, and offered and tendered a bond, with Augustus E. Willson as surety, conditioned as required by law in such cases

21

made and provided, which surety the court approved; to the motion of the defendant to remove this cause to the circuit court of the United States for the district of Lentucky and to the filing of the bond the plaintiff objects. Said motion being heard was submitted, and the court being advised orders that the motion of the defendant to remove this cause into the circuit court of the United States for the district of Kentucky and to file said bond this day tendered be sustained, and orders said bond be now filed, which is done. It is, therefore, ordered that this court proceed no further herein; to all of which the plaintiff excepts.

Affidavit of Defendant.

STATE OF CONNECTICUT, } ss:
County of Hartford, }

22 John M. Holcombe, of the city of Hartford, in the county and State aforesaid, being duly sworn, deposes and says that he is and has been for more than five years last past the secretary of the Phœnix Mutual Life Insurance Company of Hartford, Conn., and knows the names of all persons in any way authorized by said company to act as its agents and accept service of legal process in its behalf; that Addison W. Goodale is and has been for five years last past an adjuster in the employ of said company and appointed by its officers; that said Goodale has not during said period been authorized to act as agent for said company nor to accept service of any process in behalf of said company, and is not now so authorized in any way by said company nor its officers, nor to represent said company in any capacity other than as adjuster as aforesaid.

JOHN M. HOLCOMBE.

Subscribed and sworn to before me this 25th day of March, A. D. 1881.

[L. S.] HARRY CORNWELL,
Notary Public for Connecticut.

23 STATE OF CONNECTICUT, } ss:
Hartford County, }

Superior Court.

CLERK'S OFFICE.

I, C. W. Johnson, clerk of the county of Hartford and of the superior court within and for said county, which is a court of record, and keeper of the seal thereof, hereby certify that Harry Cornwell, Esquire, whose name is subscribed to the certificate or proof of acknowledgment of the annexed instrument, was at the time of taking such proof or acknowledgment a notary public within and for said county, duly commissioned and sworn, with authority by the laws of this State to administer oaths and to take the acknowledgments of deeds and other instruments; that I am acquainted with his handwriting and verily believe that the signature to the said certificate or proof of acknowledgment is genuine, and that

said instrument is executed and acknowledged according to the laws of the State of Connecticut.

In testimony whereof I have hereunto set my hand and the seal of said superior court, at Hartford, in said county and State, on this 26th day of March, A. D. 1881.

[L. S.] C. W. JOHNSON, *Clerk.*

24 *Petition for Removal to U. S. Court.*

In the Jefferson Court of Common Pleas, Jefferson County, State of Kentucky.

FANNIE M. COOK, Plaintiff,
vs.
THE PHŒNIX MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT, Defendant.

Petition for removal to the circuit court of the United States, district of Kentucky.

To said Jefferson court of common pleas of Jefferson county, State of Kentucky:

Your petitioner respectfully shows to this honorable court that the matter and amount in dispute in the above-entitled suit exceeds, exclusive of costs, the sum or value of five hundred dollars.

That the controversy in said suit is between citizens of different States, and that the petitioner was, at the time of the commencement of this suit, and still is, a corporation incorporated by an act of the Legislature of the State of Connecticut, and located and having its principal office in Hartford, in said State, and then was and still is, by virtue of said act of incorporation, a citizen of the State of
25 Connecticut, and that Fannie M. Cook, plaintiff in the aforesaid suit, was then and still is a citizen of the State of Kentucky. And your petitioner offers herewith a bond with good and sufficient security for its entering in said circuit court of the United States on the first day of its next session a copy of the record in this suit, and for paying all costs that may be awarded by said circuit court if said court shall hold that this suit is wrongfully or improperly removed thereto. And it prays this honorable court to proceed no further herein except to make the order of removal required by law, and to accept the said surety and bond and to cause the record to be removed into said circuit court of the United States in and for the district of Kentucky.

And it will ever pray.

PHŒNIX MUTUAL LIFE INS. CO.,
[L. S.] By J. M. HOLCOMBE, *Secretary.*

HARLAN & WILLSON,
Attorneys for Phœnix Mutual Life Ins. Co.

Bond for Removal.

Know all men by these presents that we, the Phœnix
26 Mutual Life Insurance Company, a corporation duly incorporated by virtue of an act of the Legislature of the State of Connecticut, and located and having its principal office in the city of Hartford, in said State of Connecticut, as principal, [and] Augustus E. Willson, surety, are held and firmly bound unto Fannie M. Cook in the penal sum of two hundred and fifty dollars, [to] the payment whereof, well and truly to be made unto the said Fannie M. Cook, her heirs and assigns, we bind ourselves, our heirs, our representatives and assigns, jointly and severally, by these presents.

Yet upon these conditions: the said Phœnix Mutual Life Insurance Company having petitioned the Jefferson court of common pleas of Jefferson county, State of Kentucky, for the removal of a certain cause therein pending, wherein Fannie M. Cook is plaintiff, and the Phœnix Mutual Life Insurance Company, defendant, to the circuit court of the United States in and for the district of Kentucky:

Now, if the said Phœnix Mutal Life Insurance Company, your petitioner, shall enter into the said circuit court of the
27 United States on the first day of its next session a copy of the record in said suit and shall well and truly pay all costs that may be awarded by said circuit court of the United States if said court shall hold that said suit was wrongfully or improperly removed thereto, then this obligation is to be void; otherwise in full force and virtue.

Witness our hands and seals this 25th day of March, A. D. 1881.

[L. S.] PHŒNIX MUTUAL LIFE INS. CO.,
By J. M. HOLCOMBE, *Secretary.*
AUGUSTUS E. WILLSON.

STATE OF KENTUCKY, *County of Jefferson,* } *sct:*

Augustus E. Willson, whose name is signed to the foregoing bond, being sworn, says that he is a resident of Kentucky, and is worth over and above his debts and liabilities five hundred dollars, exclusive of exemptions, and has property in said State subject to execution, exclusive of exemptions, worth five hundred dollars.

AUGUSTUS E. WILLSON.

28 Subscribed and sworn to before me by Augustus E. Willson this 30th day of March, A. D. 1881.

CLARENCE E. WALKER,
Notary Public, Jeff. Co., Ky.

STATE OF KENTUCKY, *Jefferson County:*

I, John S. Cain, clerk of the Jefferson court of common pleas within and for the State aforesaid, do certify that the foregoing pages, twenty-one, contain a complete and correct transcript of the record and proceedings in the case therein mentioned, as appears from the records in my office.

Given under my hand as clerk of said court this the 12th day of April, 1881.

JOHN S. CAIN,
Clerk of the Jefferson Court of Common Pleas.

The demurrer above referred to is as follows:

Demurrer.

Circuit court of the United States, Sixth Circuit and District of Kentucky.

FANNIE M. COOK, Plaintiff,
vs.
29 PHŒNIX MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT, Defendant.

The defendant, The Phœnix Mutual Life Insurance Company of Hartford, Connecticut, demurs to the petition of plaintiff in the above-styled action—

1st. Because the court has no jurisdiction of the subject of the action.

2nd. Because A. B. Cook, the alleged assignor of the policy sued on, is not made a party.

3rd. Because the said petition does not state facts sufficient to constitute or support a cause of action against defendant.

HARLAN & WILLSON,
Att'ys for Def't.

Order Sustaining Demurrer.

And on Tuesday, November 1st, 1881, the court being now fully advised of the defendant's demurrer to the petition herein, returned a written opinion herein, which is filed, and thereupon it is considered by the court that said demurrer be, and the same is hereby, sustained, and the plaintiff is directed to replead in equity in
30 conformity to the rules of this court on or before the first Monday in December next, and that defendant recover of the plaintiff its costs herein expended; to which ruling and judgment of the court the plaintiff excepts.

The opinion above referred to is as follows:

Opinion.

FANNIE M. COOK, Pl'ff, *vs.* PHŒNIX M. LIFE INS. CO., De'f't.

The husband of the plaintiff, A. B. Cook, is a necessary party. Sec. 19 Code.

This transfer of the policy as alleged is merely an equitable assignment, and hence the party assigning is a necessary party, and the fact that he is the husband does not change the rule.

The allegations of the petition shows that the suit ought to be in equity.

The demurrer is sustained, and the plaintiff is directed to replead, in conformity to the rules of this court, on or before the December rules, 1st Monday in December, 1881.

JOHN W. BARR.

31 And on Tuesday, November 15th, 1881, came the complainant, by M. Mundy, her counsel, and filed her bill of complaint herein, which is as follows:

Bill of Complaint.

To the honorable the judges of the circuit court of the United States for the district of Kentucky, in equity sitting:

Humbly complaining showeth unto your honors, your oratrix, Fannie M. Cook, wife of A. B. Cook, of the State of Kentucky, whose said husband refuses to join with her in this action, and whom she makes defendant herein, together with the Phœnix Mutual Life Insurance Company of Hartford, Connecticut, a corporation created by the laws of the said State of Connecticut, with power to contract, sue, and be sued in its said corporate name, and with said company and the said A. B. Cook, on the 27th day of August, 1872, entered into a contract of insurance, at Louisville, Kentucky (said company then being authorized to make contracts and transact business
32 in said State), by which the said company made, issued, and delivered to said A. B. Cook, at Louisville aforesaid, through its general agent for the State of Kentucky, its policy No. 66488, which was to take effect and become of force when countersigned and delivered by its said agent, W. W. Morris, to said A. B. Cook at Louisville, Kentucky, and which was so countersigned and delivered on the said 27th day of August, 1872, when and where it attached.

That in and by said policy said company then and there assured to said A. B. Cook and his assigns the life of Wm. G. Harvison, of Louisville, Kentucky, a debtor of said A. B. Cook, in the sum of twenty thousand dollars for the term of his natural life, and which said sum the said company, in and by its said policy, for certain considerations therein mentioned, and which will more fully appear by reference to said policy, now in the possession and custody of the said company, wherefore your oratrix cannot file it herewith, but calls upon said company to file the same herein with its
33 answer hereto, undertook and agreed to pay to said A. B. Cook and his assigns, at its office in Hartford, Connecticut, in ninety days after due notice and proof of the death of said Wm. G. Harvison, any amount of indebtedness to said company on account of premiums thereon first to be deducted therefrom; and she states that all the terms of the said contract to be kept and performed by said A. B. Cook and his assigns were duly kept and performed during the life of the said Wm. G. Harvison, who died at Louisville, Kentucky, on the 25th day of August, 1880, and of whose death due notice and proof were furnished to said company by your oratrix on the 1st and 29th days of September, 1880; and she fur-

ther says that on the 10th day of January, 1881, more than ninety days after said notice and proofs were furnished to said company, she duly demanded of said company, at its office in Hartford, Connecticut, payment of the sum of $17,340, being the amount due and owing by said company on said policy to your oratrix, as
34 assignee and owner of said policy, and which said sum said company then and there refused and failed to pay to your oratrix, whereby her right of action accrued to her.

Your oratrix, further complaining, showeth unto your honors that the said A. B. Cook made said contract with said company and took out said policy in said company on the life of his said debtor, Wm. G. Harvison, for the sole benefit of your oratrix, which was well known to said company at the time it issued said policy; and she says that on the 19th day of September, 1872, immediately after said policy was delivered to said A. B. Cook as aforesaid, the said A. B. Cook, with the knowledge of the said company and to complete and carry out his said purpose and intent, executed and delivered to your oratrix an assignment thereof of the following purport, to wit:

"This instrument of writing certifies that the policy, No. 66488, I have taken out on the life of Wm. G. Harvison for $20,000 in
35 the Phœnix Mutual Life Insurance Company of Hartford, Connecticut, was taken out by me for the sole benefit of my wife, Fannie M. Cook; and I hereby declare that the above-mentioned life policy of $20,000 and the money secured thereby is given and assigned to my said wife as separate estate and shall continue to be the separate estate of my said wife; and whether the said Harvison dies before or after me my said wife shall have and receive and hold said money as her separate estate and for her separate and sole benefit to dispose of as she may think proper.

"(Signed) A. B. COOK."

Which said assignment is filed with the petition of your oratrix at common law, and cannot therefore be filed herewith, but to which she here makes reference as part hereof; and she says that by said assignment and delivery of said policy to her the said A. B. Cook then and there parted with his estate in said policy, and appointed the said sum assured therein to be paid to her for her separate
36 estate ninety days after the death of said Harvison and due notice and proof thereof should be furnished to said company, all of which has transpired, and yet said company still refuses to pay her said sum, for which she sues herein.

In consideration of the premises and as for as much as your oratrix can only have adequate relief in the premises in a court of equity, where matters of this nature are properly cognizable and relievable, and to conform to the ruling of the court herein, and by leave of the court first obtained to amend her said plea, may it please your honors to grant unto your oratrix the United States writ of subpœna to be directed to said A. B. Cook, and, if necessary, to said company, which is now before the court on process at common law in this behalf, commanding him or them to appear, and

commanding both of said defendants on a day certain to make certain, full, true, and perfect answers to all and singular the premises; and further to stand to, perform, and abide the judgment of
37 this honorable court; and she prays herein for judgment against the said company for the said sum of seventeen thousand three hundred and forty dollars, with interest thereon from the 1st day of January, 1881, at the rate of 6 per cent. per annum, and for her costs herein expended, and for such further and other relief in the premises as to your honors may seem meet; and she will ever pray, &c.

FANNIE M. COOK,
Per M. MUNDY.

M. MUNDY,
Attorney for Complainant.

M. Mundy, being duly sworn, says he is the attorney of Fannie M. Cook; that she is now absent from the county of Jefferson and State of Kentucky, and that he believes the statements of the foregoing petition are true.

M. MUNDY.

Sworn to and subscribed before me by M. Mundy this 14th day of November, 1881.

R. B. HAWKINS,
Notary Public, Jeff. Co., Ky.

38 Upon which bill there issued the following subpœna, to wit:

Subpœna.

The President of the United States of America to A. B. Cook, Greeting:

You are hereby commanded to appear before our circuit court of the United States of America for the district of Kentucky at the Federal Court Hall, in the city of Louisville, on the first Monday in December next, to answer a bill in equity exhibited against you and others in our said court by Fannie M. Cook, which you shall in no wise omit, under the penalty of the law.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, and the seal of our said circuit court, hereto affixed at the clerk's office of said court, in Louisville, this 15th day of November, A. D. 1881, and in the 106th year of our Independence.

Attest: SAM'L B. CRAIL,
C. C. C. K. D.,

[L. S.] By HENRY F. CASSIN,
His Deputy.

MEMORANDUM.—The defendant is to enter his appearance
39 in the suit in the clerk's office on or before the 8th day of December next, the day at which the writ is returnable; otherwise the bill may be taken *pro confesso*.

SAM'L B. CRAIL, *Clerk*,
By HENRY F. CASSIN,
His Deputy.

Upon which subpœna is the following return, to wit:

Return.

I accept service of within writ, and authorize R. B. Hawkins, Esq'r, to enter my appearance to the suit.

A. B. COOK.

And on Monday, December 19th, 1881, came the defendant, The Phœnix Mutual Life Insurance Company, by Harlan & Willson, its counsel, and filed its answer herein, which is as follows:

Answer of Ins. Co.

To the judges of the circuit court of the United States for the sixth circuit and district of Kentucky:

The answer of the Phœnix Mutual Life Insurance Company of Hartford, Connecticut, defendant, to the bill of complaint of Fannie M. Cook.

1. This defendant, now and at all times hereafter saving and reserving unto itself all benefit and advantage of exception
40 which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said complainant's bill of complaint contained, for answer thereunto, or unto so much and such parts thereof as this defendant is advised it is material or necessary for it to make answer unto, answering, saith that it is true, as alleged in said bill, that complainant is the wife of A. B. Cook named in said bill, but defendant knows not, and has not been informed, save by said bill, and cannot set forth as to its belief or otherwise, whether he refuses to join with her in this action. This defendant saith that it is true, as alleged in said bill, that it is a corporation, created in the manner and having the powers alleged in said bill, and that this defendant and said A. B. Cook, on the 27th day of August, 1872, entered into a contract of insurance, but defendant denies that said contract was so entered into at Louisville or in Kentucky. This defendant saith that it is true that by said contract of insurance, or under it, this defendant made, issued,
41 and delivered to said A. B. Cook its policy, No. 66488, which was to take effect and become of force when countersigned and delivered by its agent, W. W. Morris, to said A. B. Cook at Louisville, Kentucky, and which was so countersigned and delivered, but defendant denies that it made or issued said policy at Louisville aforesaid, or that it made or issued said policy through its general

agent for the State of Kentucky, or that it was delivered on the 27th day of August, 1872.

In accordance with complainant's request in her said bill this defendant produces and files herewith said policy, No. 66488, as exhibit marked "P P P," and also the application for insurance upon which said policy was issued, which is upon defendant's usual printed form, and was filled up and signed by said A. B. Cook and one W. G. Harvison named in said bill, and is the same application referred to in said policy, and was and is a part of the said contract of insurance as exhibit marked "Q Q Q;" and this defendant, for greater certainty therein, and to correct the many omissions, errors, and misstatements of said bill in reference thereto, craves leave to
42 refer to said contract as set forth in said two exhibits, in which the provisions, terms, stipulations, conditions, undertakings, with the date of the contract and the date of its delivery and the place where it was made, where delivered, and where to be performed, were fully set forth, reduced to writing, and signed by all the parties thereto; and this defendant denies each and every allegation of said bill as to said contract which are or shall be inconsistent with or not in accordance with said Exhibits "P P P" and "Q Q Q," and this defendant states that said policy was made and issued upon said application at Hartford, Connecticut, and was delivered August 31st, 1872; and this defendant saith that it is true that W. W. Morris, named in said bill, was defendant's general agent in and for the State of Kentucky, with power and authority from this defendant to solicit applications for life insurance, and to receive such applications for the purpose of forwarding them to defendant at Hartford aforesaid, and to countersign and deliver any policies issued
43 on applications so forwarded, and to collect and send to defendant premiums on such policies, but only upon the delivery of receipts therefor prepared and signed at this defendant's home office in said Hartford, and to appoint sub-agents for said State of Kentucky with like powers; but this defendant does not admit, but expressly denies, that he was agent of defendant for the purpose of making contracts, or with any other powers or authority from defendant than as above expressly admitted.

This defendant saith that it is true that it assured to said A. B. Cook and his assigns the life of said Harvison in the sum of $20,000 for the term of his natural life, but this defendant saith that it knows not and has not been informed, save by said bill and the assertions of said A. B. Cook and Harvison, and cannot set forth as to its belief or otherwise, whether said Wm. G. Harvison was a debtor of said A. B. Cook to any amount whatever, or, if so, to what amount. This defendant saith it is
44 true that in and by its said policy, for the considerations therein, and in the application which was part thereof, set forth, this defendant undertook and agreed to pay said sum of $20,000 to said A. B. Cook, and his executors, administrators, or assigns, at its office at said Hartford, in ninety days after due notice and proof of the death of said Wm. G. Harvison, any indebtedness to this defendant on account of premiums thereon first to be deducted there-

from, but the performance of said agreement and undertaking by such payment was, as will appear upon examination of said contract, expressly stipulated to be and was dependent upon certain further conditions hereinafter specifically set forth, which were omitted in said bill. This defendant denies that all the terms of said contract to be kept and performed by said A. B. Cook and his assigns were kept or performed during the life of the said Harvison, but, on the contrary, this defendant saith that said A. B. Cook broke and
45 failed to perform the terms of said contract to be kept and performed by him, as hereinafter set forth. This defendant has been informed, and believes it to be true, that said Harvison died, as alleged in said bill, and admits that notice and proof of his death were furnished to it by complainant, and that she demanded of defendant at its office in Hartford, as alleged, payment of the sum of $17,340.00, the sum or amount claimed by her to be due and owing by this defendant to her on said policy, as pretended assignee and owner thereof, but defendant denies that said sum of $17,340.00, or any other sum, was or is due or owing by it to complainant, either as assignee or owner or in any way on said policy, and denies that complainant was then or there assignee or owner of said policy. This defendant admits that it refused and refuses to pay to complainant said sum of $17,340.00 or any part thereof, but denies that thereby or in any way the complainant's pretended right of action has accrued to her. This defendant denies that said A. B. Cook made said contract of
46 insurance with this defendant or took out said policy in defendant's company on said Harvison's life for the benefit or sole benefit of complainant, and this defendant knows not and has not been informed, save by said complainant's said bill and her petition at law referred to therein, and cannot set forth as to its belief or otherwise, whether on the 19th of September, 1872, or immediately after said policy was delivered to said A. B. Cook, or at any time, the said A. B. Cook, to complete or carry out the purpose or intent alleged in said bill, or for any purpose, executed or delivered to complainant the assignment of said policy set forth in said bill, or any such assignment; and this defendant denies that said A. B. Cook executed or delivered said pretended assignment with the knowledge of this defendant, and saith that it never had any knowledge or information whatever of said pretended assignment, or any such assignment, until complainant filed her said petition at law mentioned
47 in the bill, and this defendant knows not and has not been informed, save by said bill and said petition at law, and cannot set forth as to its belief or otherwise, whether said policy or the money secured thereby, or any right to the same, or any part thereof, was ever given or assigned to complainant as separate estate, or for her sole benefit, or in any manner or right, or whether by any such assignment, or in any way, she was to have or receive or hold such money, or any part thereof, as her separate estate, or in any capacity, or for her benefit, or her separate or sole benefit, or whether said alleged assignment or any assignment or delivery of said policy was ever made, or made as alleged by said A. B. Cook, to complainant, or whether said A. B. Cook then or there, at the

time or place alleged, or at any time or place, ever parted with his estate or any right in said policy until his assignment and transfer thereof to this defendant, as hereinafter set forth, or whether he appointed the said sum assured therein, or any part of it, to be
48 paid to complainant as her separate estate, or in any way, or at the time, or in any manner, in said bill alleged, but this defendant saith that it is true that it still refuses to pay complainant the said sum herein demanded by her or any part thereof.

2. This defendant, for further answer to the whole of said bill, saith that, before the policy herein sued on was issued, A. B. Cook and Wm. G. Harvison made and delivered to defendant the said application, "Q Q Q," in writing, signed by them; that the question "10" in said application was: "Is the party addicted to the habitual use of spiritous liquors or opium?" to which the answer made in said application was "No;" by which answer the said A. B. Cook and Harvison represented and declared to this defendant, in order to obtain said insurance, that said Harvison was not addicted to the habitual use of spiritous liquors or opium; whereas, in fact, the said Harvison was then, at the time of making said application
49 and said answer therein, and for a long time had been, addicted to the habitual use of spiritous liquors, and that said answer to said question "10" was untrue and fraudulent as to said use of spiritous liquors, and suppressed the fact that said Harvison was, and had been as aforesaid, addicted to the habitual use of spirit-ous liquors, which fact was well known to said Harvison and to said A. B. Cook, and was not known to this defendant, nor had this defendant any knowledge or information whatever in reference thereto until many years after said policy issued, nor until after the payment of the last premium received by this defendant on said policy.

And in the said application said A. B. Cook and said Harvison were asked by question "29:" "Is the party and the applicant aware that any untrue or fraudulent answers to the above queries, or any suppression of facts in regard to the health, habits, or circumstances of the party to be assured, will vitiate the policy and forfeit all payments thereon?" to which said A. B. Cook and
50 Harvison in said application answered "Yes;" whereby it was expressly agreed and stipulated between said A. B. Cook and Harvison and this defendant, as a condition and part of said contract of insurance then and therein applied for, that any untrue or fraudulent answers to the queries in said application above or preceding said question "29," or any suppression of facts with regard to the health, habits, or circumstances of said Harvison, should vitiate the policy and forfeit all payments thereon.

And in and by said application said Harvison and A. B. Cook declared that the answers to the questions therein were fair and true answers to said questions, and therein agreed and stipulated with this defendant, as a part of the said contract of insurance, that said application should form the basis of said contract of insurance therein applied for, and that any untrue or fraudulent answers therein or any suppression of facts, or if said Harvison should be-

come as to habits so far different from the condition then
51 represented to be in as to make the risk more than ordinarily hazardous, it should and would render the policy null and void, and forfeit all payments made thereon; for all of which questions, answers, declarations, and stipulations this defendant, for greater certainty, refers to said application "Q Q Q;" and this defendant saith that said answer to question "10" was not a fair or true answer, but was a fraudulent and untrue answer and material to the said risk, and that said answer and the aforesaid suppression of the fact that said Harvison was, and for a long time had been, addicted to said habitual use of spirit-ous liquors rendered said policy null and void, and forfeited all payments thereon.

This defendant saith that said Harvison then was and long had been addicted to such an habitual and intemperate use of spirit-ous liquors as to materially injure and impair his health, weaken his body, make it liable to sickness and disease, and shorten his life, and greatly increase the risk beyond what it would have been if said answer to question "10" had been true and there had
52 been no suppression of such facts in said application as written.

This defendant saith that said Harvison and A. B. Cook made and delivered said application to be sent to this defendant at its home office at Hartford, in the State of Connecticut, knowing that it was to be and would be used and relied upon by this defendant's officers and agents there in deciding whether to accept said risk and enter into said contract of insurance, and that this defendant did receive said application so sent at its said home office, and through its officers and agents at said office wholly believed and relied on the truthfulness and fairness of all the answers, declarations, and representations therein made as aforesaid, and believed that no material fact as to the health, habits, or circumstances of said Harvison was omitted from said application or suppressed therein; and so believing and relying, and on the faith of said application and on the conditions therein, and in no other way, this defendant accepted said risk and issued said policy based thereon, and that said
53 contract was agreed upon, accepted, concluded, and executed in said State of Connecticut, at Hartford, where it was by its express stipulations to be performed.

This defendant further saith that after said application was delivered to and accepted by it, as aforesaid, the said Harvison became and was, as to his said habit of being addicted to the habitual use of spirit-ous liquors, so far different from the condition then (in said application) represented to be in as to make the risk more than ordinarily hazardous, as aforesaid, and, as this defendant is informed and believes, and so charges, the death of said Harvison was caused or greatly hastened by said use of liquors, all of which was well known to complainant and said A. B. Cook at the time.

This defendant saith that it is expressly stipulated in said policy that if any of the declarations or statements made in the application for said policy, upon the faith of which (the application) said policy

was issued, should be found in any respect untrue, then
54 and in every such case said policy should be null and void.
This defendant refers to said policy for greater certainty and saith that said application "Q Q Q" is the same application referred to in said stipulation of said policy, and this defendant saith that by reason of the premises and of said false and untrue answers, statements, representations, and declarations, and of the said suppressions of facts and violations of the conditions of said contract of insurance, and by said Harvison's becoming as to said habit different, as aforesaid, said policy was and is null and void; and that if this defendant had had any knowledge or information of said habit of said Harvison, or of said breaches of the stipulations and conditions of said contract of insurance, or if said answers and statements in said application had been true and fair and said suppression of the truth had not occurred, this defendant would not, nor would any safely conducted life insurance company, have accepted
said risk, nor issued said policy, nor collected any premium
55 whatever thereon, but that this defendant never had any knowledge or information of said breaches, violations, false, fraudulent, and untrue answers, declarations, or statements, or suppression of facts, or of said Harvison becoming as to said habit different, as aforesaid, or any of them, or of said Harvison being or becoming so far different from the condition then at the time of making said application represented to be in as to make the risk more than ordinarily hazardous, until many years afterwards and after the payment of the last premium received thereon by this defendant, to wit, in the year 1880, whereupon, in the lifetime of said Harvison, and before receiving any further premium or payment on said policy, this defendant notified said Harvison and A. B. Cook that said policy was null and void for the reasons hereinbefore set forth, and that this defendant would no longer receive premiums on said policy or recognize it or be bound by it in any way.

56 3. And this defendant, for answer to the whole of said bill, further saith and charges that if said defendant, A. B. Cook, ever made said pretended assignment or delivery of said policy to complainant, as by her alleged, he afterwards, and in the lifetime of said Harvison, rescinded such assignment and again received from complainant and took possession of said policy with the knowledge and consent of complainant, and thereafter, and long before the death of said Harvison, to wit, on the 14th day of June, 1880, the said A. B. Cook made and delivered to this defendant his certain transfer and assignment in writing, signed by him and endorsed on said policy, in the following words and figures, to wit:

"LOUISVILLE, KY., *June* 14, 1880.

"I hereby sell, transfer, and assign to the Phœnix Mutual Life Insurance Co. of Hartford, Conn., all right and title to the within policy on the life of W. G. Harvison in consideration of the sum of four thousand dollars in hand paid by draft on the said Co. and a
57 return of the premium notes.

"(Signed) A. B. COOK."

And thereby, in consideration of the sum of four thousand dollars in hand paid him by draft on this defendant and the return of the premium notes of said A. B. Cook, which he had given for unpaid premiums on said policy and which were of great value, to wit, $2,660, and in further consideration of the settlement then and there agreed upon between him and this defendant in compromise of the contingent liability and all liability of this defendant on said contract of insurance, which was then denied by this defendant because of the matters in above paragraph No. 2 set forth, sold, transferred, and assigned to this defendant all right and title to said policy and surrendered and delivered to this defendant said policy, with his said written transfer and assignment signed by him endorsed thereon; and this defendant then and there, and in pursuance of said compromise, delivered to said A. B. Cook his said pre-
58 mium notes and a draft of one A. W. Goodale, adjuster, on this defendant for the sum of $4,000.00, payable at sight to the order of said A. B. Cook, which draft this defendant thereafter in due course paid at sight to the order of said A. B. Cook. This defendant files said draft herewith as Exhibit "R R R," and it is in the following words and figures, to wit:

"$4,000. LOUISVILLE, KY., *June* 14, 1880.

"At sight pay to the order of Dr. A. B. Cook four thousand dollars in current exchange on New York in settlement of policy No. 66488; value received.

"(Signed) A. W. GOODALE, *Adjuster.*

Which draft was thereafter endorsed by said A. B. Cook by writing his name across the back of it, and paid in accordance with its terms to his order.

This defendant saith that said settlement and compromise was negotiated and agreed upon in the presence and with the full knowledge of complainant, and that this defendant made and performed the same by surrendering to said A. B. Cook said premium
59 notes and delivering to him said draft in the presence and with the full knowledge of complainant, and paying the same to his order with the knowledge of complainant, all of which was done and performed by this defendant in good faith without any notice, knowledge, or information whatever of the assignment in the bill of complaint alleged or of any right, title, interest, or claim whatever of complainant to said policy or to the money, or any part thereof therein stipulated to be paid, or to any manner of benefit or advantage thereunder, and that complainant was present and had full knowledge at the time of said transfer, sale, and assignment of said policy to this defendant, and that said A. B. Cook has kept and never returned to this defendant said notes and money so delivered and paid to him; that by virtue of the matters in this paragraph set forth this defendant became and is the holder and owner of said policy, and all and every right, benefit, and
60 advantage, if any, secured thereby in good faith for a valuable consideration, and wholly without notice of complainant's

alleged claim, and that said policy and contract of insurance was ended and discharged, and all liability of this defendant thereon settled.

4. And this defendant further saith that the complainant was present and took part in the discussion of the terms of the compromise and agreement in the last preceding paragraph set forth, and had notice beforehand and full knowledge at the time of everything done and performed by and between this defendant and said A. B. Cook, as therein set forth, and had ample and every facility and opportunity for informing this defendant of her said pretended claim and assignment, nor was she in any manner restrained or hindered in any way or by any person from so informing this defendant, yet wholly failed to give or permit this defendant to receive any knowledge or information whatever of the said pretended assign-
61 ment, or any right, title, or claim whatever by her to or under said policy, and suffered and permitted defendant to surrender said notes and deliver said draft in her presence and pay said draft with her knowledge without causing to be given or giving to this defendant or in way permitting this defendant to know or have any information or knowledge whatever of said alleged assignment or any assignment to her, or any right, title, or claim whatever by her to or under said policy; and this defendant alleges and charges that it is contrary to equity and good conscience for complainant now to be permitted to assert or maintain the claim sued on in the bill of complaint or said assignment to her, and that she is by her said conduct estopped therefrom and from prosecuting her claim herein alleged.

And this defendant denies all the allegations of said bill inconsistent with the terms and provisions of said application and policy
62 of insurance or with this answer, without — that any other matter or thing material for it to make answer to, and not herein sufficiently answered, avoided, or denied, is true to the knowledge and belief of the defendant; all which matters and things this defendant is ready to aver and prove as this court shall direct, and prays to be hence dismissed, with its reasonable costs and charges in this behalf most wrongfully sustained.

THE PHŒNIX MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT,
By HARLAN & WILLSON, *Sol'rs.*

Augustus E. Willson, being duly sworn, says that he is one of the solicitors of the defendant, The Phœnix Mutual Life Insurance Company of Hartford, Connecticut; that the officers of said company are absent from Jefferson county, Kentucky, and in the State of Connecticut, remote from the place at which this court is held, and that affiant believes the above answer to be true.

AUGUSTUS E. WILLSON.

63 Subscribed and sworn to before me by Augustus E. Willson this 19th day of December, 1881.

SAM'L B. CRAIL, *Clerk*,
By HENRY F. CASSIN, *D. C.*

Exhibit "P P P," referred to in the answer, is as follows:

EXHIBIT "P P P."

Phœnix Mutual Life Insurance Company,
No. 66488. Hartford, Conn. $20,000.

Age, 52 years. Annual premium, $1,024.00. Term, life. Annual payments.

This policy of assurance witnesseth: That The Phœnix Mutual Life Insurance Company of Hartford, Conn., in consideration of the representations made to them in the application for this policy, and of the sum of one thousand and twenty-four dollars and — cents to them duly paid by A. B. Cook, creditor, and of the annual payment of a like amount on or before the twenty-seventh day of August in every year during the continuance of this policy, do assure the life of William G. Harvison, of Louisville, in the county of Jefferson, State of Kentucky, in the amount of twenty-thousand dollars
64 for the term of his natural life. And the said company do hereby promise and agree to pay the amount of the said insurance at their office in the city of Hartford, Conn., to the said A. B. Cook, creditor, and his executors, administrators, or assigns, in ninety days after due notice and proof of the death of the said party whose life is hereby insured, any indebtedness to the company on account of this policy being first deducted therefrom.

And the said company do further promise and agree that, if after having received not less than three (3) annual premiums this policy shall be surrendered while in force, a new policy will be issued for the whole amount of even dollars of premiums received by the company (subject to any indebtedness on account of premiums), without subjecting the assured to any subsequent charge, except the interest annually in advance on all indebtedness on this policy.

This policy is issued and accepted by the assured upon the following express conditions and agreements:

First. If the said William G. Harvison shall, at any time
65 during the continuance of this policy, without the consent of the said company previously obtained in writing, visit any part of the Western Hemisphere lying between the tropics, or of the Eastern Hemisphere, between the 36th parallel north and the Tropic of Capricorn, or engage in the manufacture or transportation of gunpowder or fireworks, or in submarine operations, or in any military or naval service whatsoever (the militia not in actual service excepted), or in case he shall die by the hands of justice, or in *or in* consequence of a duel or of the violation of any law of these States or of the United States or of any other country which he may be permitted under this policy to visit or reside in, or if any of the declarations or statements made in the application for this policy, upon the faith of which this policy is issued shall be found — in any respect untrue or in case any note given for the cash part of premium on this policy shall not be paid at maturity, or in case the interest is not paid
66 annually in advance on any notes which may be given for

any portion of the premiums on this policy, then and in every such case this policy shall be null and void.

Second. If the said premiums shall not be paid at the office of the company in the city of Hartford, Conn., or to an agent of the company, on his producing a receipt signed by the president or secretary on or before the date above mentioned, then in every such case the said company shall not be liable for payment of the sum insured, or any part thereof, and this policy shall cease and determine.

Third. In every case, when this policy shall cease and determine or become or be null and void, all payments thereon shall be forfeited to this company.

This policy to take effect when countersigned by W. W. Morris, agent at Louisville, Ky.

In witness whereof the said Phœnix Mutual Life Insurance Company of Hartford, Conn., have, by their president and secre-
67 tary, signed and delivered this contract this twenty-seventh day of August, one thousand eight hundred and seventy-two.

E. FESSENDEN, *President.*
J. F. BURNS, *Secretary.*

Countersigned this thirty-first day of August, 1872.
WM. W. MORRIS, *Agent.*

On the back of said policy is the following endorsement, viz:

LOUISVILLE, KY., *June* 14, 1880.

I hereby sell, transfer, and assign to the Phœnix Mut. Life Ins. Co. of Hartford, Conn., all right and title to the within policy on the life of W. G. Harvison in consideration of the sum of four thousand dollars in hand paid by draft on the said Co. and a return of the premium notes.

A. B. COOK.

Exhibit "Q Q Q," referred to in the answer, is as follows:

EXHIBIT "Q Q Q."

Application for assurance to the Phœnix Mutual Life Insurance Company, Hartford, Conn.

Questions to be answered by the person whose life is pro-
68 posed to be insured, and which form the basis of the contract:

1. In whose behalf or for whose benefit is the assurance to be effected?

(Name at full length.) A. B. Cook; residence, Louisville; occupation, physician; relationship to the party to be insured, brother-in-law and creditor.

2. What is the full name of the party to be insured? William G. Harvison; occupation, merchant; residence, Louisville, county of Jefferson, State of Kentucky.

3. Has the above-named person an interest in the life to be insured to the full amount now applied for? Yes. What amount of assurance is desired? $20,000.

4. What kind of policy is desired? Life.

5. How is it desired that the premium shall be paid; annually? Yes. Half note? Yes.

6. How is it desired that dividends be applied?

7. Where and when was the party whose life is to be insured born? At Ireland; year, 1820; month, Feb.; day, 27; age at nearest birthday, 52.

8. What is the present state of the party's health? Good.

9. Is the party married? Yes.

69 10. Is the party addicted to the habitual use of spirit-ous liquors or opium? No.

11. Has the party been vaccinated, or had smallpox or varioloid? Vaccinated.

12. Has the party been acclimated to a southerly climate? A. No. If so, when and how? B. ——. Has the party had the yellow fever? C. No.

13. What employments have the party been engaged in? Teacher and merchant. Have these employments had any injurious effect on health? No.

14. Has the party ever had any of the following diseases: Apoplexy, asthma, bronchitis, consumption, cholic, disease of the heart, dropsy, fits, fistula, gout, insanity, liver complaint, paralysis, palpitation, quinsy, rheumatism, rupture, scarlet fever, spitting of blood, disease of the urinary organs? None of No. 14.

15. Has the party had inflammatory rheumatism; if so, when and how often? No.

16. Is the party subject to dyspepsia, dysentery, or diarrhœa? No.

17. Has the party now, or has he had, an habitual cough? No.

70 18. Has the party ever met with any severe personal injury; if so, what? No.

19. Has the party had during the last seven years any severe sickness or disease; if so, state the particulars and the name of the attending physician, or who was consulted and prescribed? No.

20. Is the party now afflicted with any disease or disorder of any kind; and, if so, what? No.

21. State particulars as to the longevity of grandparents. Long lived. A. On the father's side? A. ——. B. On the mother's side? B. 80 to 90.

22. Have the parents or brothers or sisters of the party been afflicted with insanity or with pulmonary, scrofulous, or any other constitutional disease, hereditary in its character? No.

23. Are the parents of the party living? Father. Yes. Age. 82. State of his health. Good. Mother. ——. Age. ——. State of health. ——.

24. Are the parents of the party dead? Father. ——. Age at death. ——. Cause of death. ——. Mother. Yes. Age at death.
75. Cause of death. Do not know.

71 25. How many brothers has the party had? Two. How many are living and their names? 2. At what ages? 34, 50. What is the state of their health respectively? Good. Good. How many sisters? Three. How many are living and their names? 3. At what ages? 48, 46, 32. What is the state of their health respectively? Good. Good. Good.

26. Name and residence of the family physician of the party, or of one whom the party has usually employed or consulted. Dr. A. B. Cook, Louisville, Ky.

27. Name and residence of an intimated friend. ——.

28. Has any application been made to this or any other company for assurance on the life of the party; if so, with what result; what amounts are now assured on the life of the party, and in what companies; if already assured in this company, state the No. of policy. $5,000 in Ætna, commuted; $2,000 in Conn. Mutual, commuted.

29. Is the party and the applicant aware that any untrue or fraudulent answers to the queries, or any suppression of facts in re-
72 gard to the health, habits, or circumstances of the party to be assured, will vitiate the policy and forfeit all payments thereon? Yes. It is hereby declared that the above are fair and true answers to the foregoing questions, and it is acknowledged and agreed by the undersigned that this application shall form the basis of the contract for insurance, which contract shall be completed only by delivery of policy, and that any untrue or fraudulent answers, any suppression of facts, or should the applicant become, as to habits, so far different from condition now represented to be in as to make the risk more than ordinarily hazardous, or neglect to pay the premium on or before the day it becomes due, shall and will render the policy null and void, and forfeit all payments made thereon.

Dated this 15 day of August, 1872.

(Signed) WM. G. HARVISON.
A. B. COOK.

In presence of—
WM. W. MORRIS.

73 Recommended by Wm. W. Morris, agent at Louisville, Ky.

Questions, each of which is to be answered by the medical examiner of the company:

1. Name and residence of the person examined. William G. Harvison, Louisville, Ky.

2. State the following particulars: Weight. 200 lb. Height. 5 f't 7 in. Circumference of the chest. 43 in. Figure. Quite stout, fleshy rather. General appearance. Very good.

3. State the condition of the heart and respiratory organs, as indicated by auscultation and percussion of the chest. Both very good.

4. A. State the character of the respiratory murmur over the lungs. A Good. B. State the character of the respiration. B.

Good. C. State the condition of the organs of respiration as regards symptons or signs of disease. C. No signs of disease.

5. A. Describe the character of the heart's action. A. Good.
74 B. What is the character of its rhythm? B. Perfect. C. What is the condition of the heart and blood vessels? C. Good.

6. State the rate and other qualities of the party's pulse. In a standing posture, 84; in a sitting posture, 76. B. Is it uniform, regular, and steady? B. Yes.

7. Is the party habitually free from any tendency to cough, expectoration, difficulty of breathing, or palpitation? Yes.

8. Are the functions of the brain, the muscular and nervous systems, in a healthy state? Yes—says that all his life he has been little inclined to be nervous.

9. Are the functions of the abdominal and urinary organs in a like healthy condition? Yes.

10. Is the party exempt from any predisposition, either hereditary or acquired, to any local or constitutional disease? Yes.

11. Is the party now entirely free from any disease or disorder whatever? Yes.

12. Do you believe the party to be sober and temperate in
75 all the habits of life? Yes.

13. Have the party's parents, brothers, — sisters been exempt from pulmonary or other diseases hereditary in their nature? Yes, as far as I can learn.

14. A. Has the party ever had severe injury or illness? A. No. B. If so, has it had any effect upon the constitution? B. No.

15. Do you consider the applicant's life safely assurable, and do you recommend that a policy be granted? I do.

Dated Aug. 15th, 1872.

(Signed) T. P. SATTERWHITE, M. D.,
Medical Examiner, Phœnix Mutual Life Insurance Company.

Questions, each of which is to be answered by the medical examiner of the company:

1. Name the residence of the person examined. Wm. G. Harvison, Louisville, Ky.

2. State the following particulars: Weight. 200. Height. 5 ft. 7 in. Circumference of the chest. 42 in. Figure. Robust. General appearance. Healthy.

3. State the condition of the heart and respiratory organs,
76 as indicated by ausculation and percussion of the chest. Perfectly healthy.

4. A. State the character of the respiratory murmur over the lungs. A. Vesicular. B. State the character of the respiration. B. Full and free. C. State the condition of the organs of respiration as regards symptoms or signs of disease. C. Healthy; no signs or symptoms of disease.

5. A. Describe the character of heart's action. A. Free and unobstructed. B. What is the character of its r-ythm? B. Clear and

natural. C. What is the condition of the heart and blood vessels? C. Healthy.

6. A. State the rate and other qualities of the party's pulse. A. In standing posture, 82; in a sitting posture, 76; regular. B. Is it uniform, regular, and steady? B. Yes.

7. Is the party habitually free from any tendency to cough, expectoration, difficulty of breathing, or palpitation? Yes.

8. Are the functions of the brain, the muscular and nervous systems in a healthy state? Yes.

77 9. Are the functions of the abdominal and urinary organs in a like healthy condition? Yes.

10. Is the party exempt from any predisposition, either hereditary or acquired, to any local or constitutional disease? Yes.

11. Is the party now entirely free from any disease or disorder whatever? Yes.

12. Do you believe the party to be sober and temperate in all the habits of life? Yes.

13. Have the party's parents, brothers, or sisters been exempt from pulmonary or other disease- hereditary in their nature? Yes.

14. A. Has the party ever had severe injury or illness? A. No. B. If so, has it had any effect upon the constitution? B. ——.

15. Do you consider the appellant's life safely assurable, and do you recommend that a policy be granted? Yes, I do.

Dated Louisville, Aug. 24th, 1872.

(Signed) W. T. HUMPHREYS, M. D.,
Medical Examiner.

78 Exhibit "R R R" referred to in the answer is as follows:

EXHIBIT "R R R."

$4,000. LOUISVILLE, KY., *June 4th*, 1880,

At sight pay to the order of Dr. A. B. Cook four thousand dollars in current exchange on New York in settlement of policy No. 66488, value received.

A. W. GOODALE, *Adjuster.*

To the Phœnix Mutual Life Ins. Company, Hartford, Conn.

On the back of which are the following endorsements, viz:

A. B. Cook:

Pay Rob't Jaffray, cashier, or order, for collection.
J. H. LINDENBURGER, *Cashier.*

Pay Hartford National Bank, or order.
ROBERT JAFFRAY, *Cashier.*
JOHN JAFFRAY.

W. S. BRIDGMAN, *Cash'r.*
Per M. H. BRIDGMAN.

And on Tuesday, January 10th, 1882, came the complain-
79 ant, by her counsel, and filed her replication herein, which is as follows:

Replication.

In the Circuit Court of the United States for the Sixth Circuit & District of Kentucky.

FANNIE M. COOK, Pl'ff,
vs.
PHŒNIX MUTUAL LIFE INSURANCE CO. OF HARTFORD, CONN., *et al.*, Def'ts.

The replication of Fannie M. Cook, complainant, to the answer of the Phœnix Mutual Life Insurance Company of Hartford, Conn., def't.

This repliant, saving and reserving unto herself all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto saith that she will aver and prove her said bill to be true, certain, and sufficient in law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant: without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied
80 unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in her said bill she hath already prayed.

FANNIE M. COOK.

M. MUNDY, *Solicitor.*

And on Tuesday, January 24th, 1882, came the defendant, A. B. Cook, by R. B. Hawkins, his counsel, and filed his answer herein, which is as follows:

Answer of A. B. Cook.

To the judges of the circuit court of the United States for the 6th circuit and district of Kentucky:

The answer of A. B. Cook, def't, to the bill of complaint of Fannie M. Cook.

This defendant, without waiving exceptions, makes answer to so much of said bill of complaint as he is advised it is material and necessary for him to make answer unto.

1. Answering he admits that the said complainant is his
81 wife, and says that it is true that he refused to join with her in this suit, and for reasons which he will hereafter state.

2. He admits and says that it is true that he procured and took out the life policy sued on on the life of Wm. G. Harvison, his debtor and brother-in-law, in the Phœnix Mutual Life Insurance Co. of Hartford, Connecticut, his codefendant, in the sum of $20,000, which

said Harvison owed him, for the sole and separate use and benefit of complainant, which fact was well known to said company at the time, through its general agent for Ky., Wm. W. Morris, to whom he communicated said fact at the time, and that in so taking out said policy he acted under the advice of said agent, to whom he gave directions to have said policy issued in the name of and to complainant, but he says when said agent delivered said policy this defendant discovered it was issued to him and in his name, to which he called said
82 agent's attention, and that said agent then and there explained to him that being upon the life of a debtor it was necessary that said policy should issue to this defendant, and instructed this defendant that to transfer the same and make complainant the beneficiary this defendant could assign said policy to her on a separate paper; and he says that, acting under said advice, this defendant did afterwards, on the 19th day of Sept., 1872, execute and deliver to said complainant the assignment of said policy set up in her said bill of complaint, and then and there delivered said policy to her, and during the lifetime of said Harvison paid the annual premiums and kept the said policy alive for her sole and separate benefit, having assigned said policy and the money secured thereby to her for her separate estate, as appears in said assignment.

He further states that he refused to join with her in this
83 suit for the following reasons: That in Dec., 1879, one A. W. Goodale, the adjuster of said insurance company, in company with said W. W. Morris, said general agent, called on this defendant and stated to him that said policy had become void and worthless, and offered, on behalf of said company, to purchase said policy and to pay this defendant therefor the sum of $1,100, which would be the then cash value thereof if not void, and which offer this defendant rejected; that on several occasions thereafter the said Goodale came to this defendant and renewed the offer for said company for said policy up to the sum of $4,000, all of which offers this defendant rejected. He says he informed said Goodale and said Morris that he had assigned said policy to said complainant, and had no right to sell or cancel it; and he further says that said complainant, in the presence of this defendant and said Goodale and said Morris, protested against the surrender, sale, or transfer or cancelment of said policy, and told said Goodale
84 and said Morris that it had been taken out for her benefit, and had been assigned to her and belonged to her; that said Goodale thereupon said he did not regard her claim, and that if I did not at once accept his proposal he would have suit instituted against me and compel me to surrender said policy and get nothing therefor. In my great perplexity, being at the time in feeble health and compelled to use opiates constantly, and dreading to be dragged into court, and being assured by said Goodale that said policy was void, and being uncertain and apprehensive, I yielded to his threats, and to avoid said threatened suit I delivered and surrendered said policy to him for said company, and, though coerced thereunto as aforesaid, this defendant was unwilling and would not go

into the courts as a suitor, and he refused to join with complainant in this suit.

He, further answering, says that he tendered the said money received by him from said company for said policy to complain-
85 ant, and she refused and refuses to accept the same, and he says that she did not direct him to make said surrender of said policy, nor has she since approved his aforesaid act; all of which matters and things this defendant is ready to aver and prove as this court may direct, and he prays to be hence dismissed, with his reasonable costs and charges.

R. B. HAWKINS,
Att'y for Def't, A. B. Cook.

A. B. Cook, the defendant, being duly sworn, says he believes the statements in the foregoing answer to be true; that so far as they are made from his own knowledge they are true, and that so far as they are made from information derived from others he believes them to be true.

Sworn to before me this eighteenth day of January, 1882.

[L. S.] CHARLES FRASER,
Notary Public, N. Y. Co.

And on Monday, February 6th, 1882, came the complain-
86 ant, by her counsel, and filed her replication herein, which is as follows:

Replication.

Circuit Court of the United States for the Sixth Circuit & District of Kentucky.

FANNIE M. COOK, Pl'ff,

vs.

PHŒNIX MUTUAL LIFE INS. CO. *et al.*, Def't-.

The replication of Fannie M. Cook, complainant, to the answer of A. B. Cook, defendant.

This repliant, saving and reserving to herself all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto saith that she will aver and prove her said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be relied upon by this repliant, without this, that any orther matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which
87 matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by her said bill she hath already prayed.

M. MUNDY,
Att'y for Repliant.

And on Wednesday, July 25th, 1883, this cause came on to trial, and the complainant read in evidence the following depositions and the exhibits therewith filed, viz: The first and second depositions of A. B. Cook; the Exhibit "R. C. K. 1" with said first deposition; the depositions of G. W. Ronald, L. J. Frazee, Henry C. Miller, J. W. Edwards, Cary B. Blackburn, the first and second depositions of Mamie M. Roberts, the deposition of Mrs. L. L. Hickman.

And the defendant read in evidence the following depositions and the exhibits filed therewith, viz: The depositions and exhibits therewith of A. W. Goodale, with Exhibit "P P P," and the transfer, dated June 14th, 1880, signed by A. B. Cook, Exhibits "Q Q Q" and "R R R;" the depositions of John A. Harvison, Wm. W. Morris, with the Exhibits "W. W. M. 2," "W. W. M. 3," "W. W.
88 M. 4," and "W. W. M. 5," John M. Holcombe, Ashabel W. Barrows, Aaron C. Goodman, with the Exhibits "A," "B," "C," "C," "C," "D," "D," "D," "E," and "F" therewith, and of Henry Cornwell with the Exhibits "A" and "B" therewith.

Decree.

And thereupon this cause was fully argued by counsel for both complainant and defendant and was submitted to the court for its decision, and thereafter, upon due deliberation upon the said cause, the court being sufficiently advised, it was decreed and ordered by the court that the bill of complaint herein of Fannie M. Cook, complainant, against The Phœnix Mutual Life Insurance Company of Hartford, Connecticut, be, and it is hereby, dismissed, and that the defendant recover of the complainant its costs herein expended, which shall be taxed by the clerk, and may have execution.

Appeal.

And thereupon came the complainant by counsel and prayed an appeal from the decree herein to the Supreme Court of the United States, which is granted.

89 The complainant's depositions are as follows:

Deposition [of] A. B. Cook.

Dr. A. B. Cook, being sworn, testified:

Int. 1. By Mr. Mundy, counsel for the plaintiff: Are you the Dr. A. B. Cook one of the defendants in this suit?

Ans. I am.

Int. 2. State whether or not you refused to join with the plaintiff in this suit?

Ans. I did.

Int. 3. State the purpose and the circumstances under which you took out the policy of insurance sued on in The Phœnix Mutual Life Insurance Co. of Hartford, Connecticut, if you did take it out.

Ans. I desired to take out a life policy for the sole benefit of my wife. My own health had been so precarious that I would not offer myself to any Co. for a life policy. I learned through W. W. Mor-

ris, general agent, that as a creditor I could take out a policy on the life of Wm. G. Harvison. Believing him to be a good risk I took out the policy on his life.

Int. 4. At the time you took out the policy sued on, who was the general agent for the State of Kentucky of the defendant,
90 The Phœnix Mutual Life Insurance — of Hartford?

Ans. W. W. Morris.

Int. 5. State whether or not you informed the general agent at the time of your purpose to take the policy for the benefit of your wife, and what explanation, if any, he gave you for not having your wife's name appear in the application and the policy as beneficiary?

Ans. I did so inform him. When the application was presented to me I asked the general agent why my wife's name did not appear in the application as the beneficiary; that it was taken out for her sole benefit, and that I did not want it for myself. The general agent replied that as I was a creditor her name could not appear in the application; that I would have to make her an assignment on a separate paper. When the policy came I again asked the general agent if there was no way by which my wife's name could appear on the policy as the beneficiary; that I wanted it so fixed that under no circumstances could she be deprived of its benefits. The
91 general agent replied that her name could not appear; that I would have to give her an assignment on a separate paper; that this would be much better and make it much stronger.

Int. 6. State whether or not you did make an assigment of the policy to your wife on a separate piece of paper after you received it.

Ans. I did.

Int. 7. Look at the paper now shown you, marked at the bottom "R. C. K. (1)," and state whether or not the paper is in your handwriting and signed by you, and is it or not the assignment you made of said policy to your wife?

Ans. The paper is in my handwriting. The signature is mine. It is the assignment I made to my wife.

Int. 8. State whether or not you executed that paper on the day it bears date—19th of September, 1872—and whether or not you delivered the said paper and the policy therein referred to on the same day to your wife.

Ans. I did, and delivered the same and the policy to my wife on the same day.

92 Int. 9. State whether or not your wife kept the assignment and policy in her possession as her property after that time, and if the policy afterwards came into your possession. State the circumstances under which it occurred and the occasion of the same.

Ans. She did. When we traveled for the benefit of my health the private papers of myself and wife were placed in one parcel and deposited in W. C. Garland's safe at his drug store on Market, n'r 5th St., for safe keeping. Sometimes our papers were kept locked in my private secretary. At the time the policy was surrendered we had a few days before returned from New York. As we expected to leave the city in a short time I did not deliver my wife's private

papers to her. She did not even know that I had withdrawn her papers from Garland's safe.

Int. 10. State whether or not you paid all the annual premiums on the policy up to the time of the death of Wm. G. Harvison, and how you paid them, whether in cash or in cash and notes.

Ans. I did. The policy was taken out on the half-note
93 plan by advice of the general agent, and I paid the premiums in cash and notes.

Int. 11. To what time did the last annual premium so paid by you keep said policy alive and in force?

Ans. To Aug. 27th, 1880.

Int. 12. To whom did you pay the annual premiums which you paid on said policy from 1872 to 1880?

Ans. I paid the annual premiums to W. W. Morris, general agent of the Co.

Int. 13. When and where did Wm. G. Harvison, the insured, die?

Ans. He died on the 25th of August, 1880, at St. Joseph's infirmary, on 4th St., Louisville, Ky.

Int. 14. Of what did he die?

Ans. He died of chronic hepatization of the lungs.

Int. 15. State whether not an autopsy was made on him after death. If so, who was present at the time?

Ans. An autopsy was made at the time; the dissection was made by Dr. H. C. Miller; present, Drs. G. W. Ronald, C. B. Blackburn, and myself. I do not recollect positively that any others were present.

94 Int. 16. Was the cause of his death developed by the autopsy?

Ans. It was.

Int. 17. How long have you been a practicing physician and surgeon?

Ans. Twenty-nine years.

Int. 18. Did you attend Wm. G. Harvison during his last sickness as one of his physicians?

Ans. I attended him in consultation with Dr. C. B. Blackburn.

Int. 19. Look at the assignment on the back of the policy sued on, dated June 14, 1880, and state whether you signed that assignment with your signature and who wrote the assignment.

Ans. I signed the assignment. The assignment was written by Dr. Goodale.

Int. 20. State all the circumstances under which you signed that assignment and whether or not the plaintiff was present and consented to it or protested against it.

Ans. For several months the agents of the Co. (W. W. Morris & Dr. Goodale) had harrassed and besieged me to give up the policy.

Each one had repeatedly stated if I did not give up the
95 policy that I would not get anything for it. Dr. Goodale asserted that the policy was of no account; was void; not worth anything; that if I did not give it up I would loose all the money I had paid on the policy, and frequently said the Co. would sue me for surrender of the policy and I would get nothing back. I

claimed that I had acted in good faith; that I had concealed nothing from the Co.; that I had paid the annual premiums; that the Co. had received my money; that the premiums were paid up to Aug. 27th, 1880, and that the Co. had no right to demand the policy. Dr. Goodale still repeated his threats of suit for surrender of the policy. When Dr. Goodale returned to the city, in June, 1880, he visited my office several times, insisting that I should give up the policy. I said that I did not want to discuss the subject of the policy, and requested him never to come to my office again to talk about the subject.

I had informed Dr. Goodale that the policy belonged to my
96 wife; that it was her property, and that I could not make any settlement. After I had requested Dr. Goodale not to visit me any more to discuss the subject of surrendering the policy he persisted in coming afterwards, urging me to give up the policy and repeating his threats of bringing suit if I did not accede to his demands. I had told Dr. Goodale during the interviews that the Co. had received my money after full knowledge of all the facts and that it was a fraud and swindle on the part of the Co. to take the policy. At his last visit, under his threats and demands, I finally yielded. After he received the policy he asked me if I was satisfied. I told him I was not; that it was an outrage and swindle. Dr. Goodale replied that it was the best thing I could do; that the policy was not worth the money he had offered, but he had made the settlement to avoid a lawsuit. He tried to impress me that it was great generosity on the part of the Co. to allow me anything for the policy.

97 In all the interviews at which my wife was present she positively and firmly protested against the surrender of the policy. In an interview before the last one she told Dr. Goodale she would never consent to give up the policy; that it was her property and that Mr. Morris had instructed her why it was necessary to have the assignment a separate paper. Dr. Goodale requested her to consider the matter. She replied she would never change her mind; that she was firm as a rock. At the last interview she protested violently against the surrender of the policy. She told Dr. Goodale that I was in no condition to transact important business. Dr. Goodale curtly said that if she did not think her husband competent to transact business she had better get a divorce. She warned Dr. Goodale against taking the policy; that if he did it was at his own risk; that she would hold Co. responsible for the full amount of the policy. Dr. Goodale then excitedly asked if her name appeared on the policy. My wife immediately replied that her
98 name did not appear; that she had already explained why it did not; that Mr. Morris had told her in my presence that as I was a creditor her name could not appear. Dr. Goodale tartly replied that he — heard enough of such talk; that he did not want to hear anything more about her claim. He then said he had come to get the policy, and demanded that I should give it up or he would sue me for surrender. My wife again warned him of the conse-

quences; that he took it with his eyes open and against her protest.

Int. 21. State whether or not your wife at any time after September 19, 1872, surrendered or returned to you the assignment you had made to her of the policy sued on with a view to its cancelment, or as surrendering her rights under it.

Ans. She did not.

Int. 22. Look at the policy marked "P P P," No. 66488, and state whether or not that is the same policy you assigned to your wife by the assignment of the 19th of September, 1872, and,
99 if it is, make the same part of your deposition.

Ans. It is the same policy; I make it a part of my deposition (marked R. C. K. 2) and file it.

Int. 23. State what amount of money W. G. Harvison owed you at the time of his death in 1880.

Ans. Between $25,000 and $30,000.

Int. 24. Look at the application marked Exhibit "Q Q Q," and state in whose handwriting it is filled up.

Ans. In the handwriting of W. W. Morris.

Int. 25. Do you or not mean W. W. Morris the general agent of the Co.?

Ans. I do.

Int. 26. State whether or not you were present when Mr. Morris filled up that application.

Ans. I was not.

Int. 27. State whether or not you at any time proposed or offered to the general agent of the Co., W. W. Morris, to surrender or deliver up the policy for cancelment; if so, state when it was, where it was, and why it was, and state any conversation you had on that
100 subject with the said general agent, as far as you can remember.

Ans. I did offer to surrender the policy for cancelment at the office of said general agent. My recollection is that it was in August, 1877, at the time the annual premium was due. For some time the insured, Wm. G. Harvison, had been drinking. In June, 1877, I saw a notice in the newspaper that the wife of the said assured had applied for a divorce, one of the complaints alleged being drunken-ess. After reading said notice of application for divorce I saw said general agent, W. W. Morris, stated the fact, and asked him if the habits of said insured would not vitiate the policy. Said general agent assured me that it would have no effect whatever on the policy; that the divorce would make no difference, and advised me by all means to keep up the policy. I took the policy to said general agent's office at the time the annual premium was due, Aug., 1877, stating that the assured'-, W. G. Harvison's, habits had changed; that he had left the city; that I was afraid I would have
101 trouble about the policy, and did not wish to pay any more money on it. Said W. W. Morris again advised me to pay the premium and keep the policy alive; that it was a good investment, and the money would be sure after said W. G. Harvison's death. I left the policy on his desk to be sent to the home office of

the Co. During the day he sent a message to me by my wife, requesting me to come to his office and pay the premium on the policy. I again visited his office; he assured me that the divorce did not and could not affect the validity of the policy; that it was the best investment I could make. With these assurances I paid the annual premium and kept the policy alive.

Int. 28. You have stated in the last part of your answer that the general agent stated to you that the divorce of W. G. Harvison would have no effect on the policy. State what he said to you at that time, if anything, as to the drinking habit acquired by Harvison affecting the policy.

Ans. The general agent stated positively that the drinking habit of W. G. Harvison would not effect the policy.

102 Int. 30. When did you first know or receive information that Wm. G. Harvison, the assured, had acquired the habit of drinking?

Ans. My recollection is that it was in 1875.

Int. 31. State whether or not, according to your information or knowledge, said Harvison was addicted to the habit of drinking in 1872, when the policy was taken out.

Ans. He was not addicted to drinking in 1872, when the policy was taken out. If he was addicted to drink I did not know it.

Int. 32. When you first learned of Harvison's drinking what did you do in consequence of such information, and to whom did you communicate it?

Ans. I called upon the general agent, W. W. Morris, and informed him that Harvison was drinking.

Int. 33. State whether or not said Harvison continued the habit of drinking up to the time of his death; and how much did you see of him after 1875?

103 Ans. He did not continue the habit of drinking up to the time of his death. I saw him frequently on the street from 1875 to the spring of 1877. I did not see him from the spring of 1877 until March, 1880. From the last date until the time of his death I saw him frequently.

Int. 34. From what you saw or knew of Harvison's drinking habits after 1875, and from what you saw of him after his return to Louisville, of which you have spoken, and from what you learned of his condition as consulting physician during his last sickness, and from what you learned from the autopsy as to the cause of his death, will you please state whether or not his habit of drinking made the risk on his life extra hazardous or materially increased the risk, or in any way, either directly or indirectly, proximately or remotely, contributed to or caused his death?

Ans. To the best of my knowledge, I do not believe that his habit of drinking made the risk on his life extra hazardous, nor did it materially increase the risk, nor was it a factor as a cause of his death.

104 Int. 35. Will you please make the assignment from yourself to your wife, dated September 19, 1872, and marked "R.

C. K. (1)," a part of your deposition, and file it as part of your deposition?

Ans. I file said paper as part of my deposition.

Int. 36. State whether or not at any time, and when, you communicated with the home office of the defendant at Hartford, Conn., about the policy sued on. State the purpose of such communication and, so far as you can, the purport of the correspondence and the occasion of it.

Ans In October, 1879, I addressed a letter to the president of the Co. at Hartford, Conn., in regard to the policy. I desired to reduce the amount of the policy to a cash basis, call in my notes, and pay all cash annual premiums. I did not like to have so many outstanding notes. Two or three times I asked the general agent, W. W. Morris, if the Co. would not reduce the policy and make all cash annual premiums. He said the Co. would reduce the policy one-half on the same half-note plan, reduce the notes one-half, but that the Co. would not give me any credit for the reduced policy
105 for any part of the money already paid in annual premiums. I declined to accept the proposition. The general agent advised me to pay the premiums until I could take out a paid-up policy for $10,000.

In Oct., 1879, in consequence of failing health, I was anxious to reduce the policy to a cash basis and pay all cash annual premiums. To accomplish this purpose I addressed the letter to the president of the Co., asking if there was not some way by which I could reduce the policy to a cash basis and pay all cash premiums. In a few days I received an answer from the sec. of the Co. referring me to the general agent, W. W. Morris, who would "probably" arrange the matter with me. W. W. Morris called at my office, and stated that the cash value of the policy was only about $1,170.00; that the Co. would not issue such a policy as I desired.

Int. 37. Please state whether or not you have in your possession now the letter you speak of as having been received from the secretary of the Co. referring you to the general agent, W. W.
106 Morris, to arrange that business or what became of that letter.

Ans. I have not the letter in my possession. It was a short note, containing only a few lines after making a memorandum that such a letter had been received. I threw it in the waste basket.

Int. 38. Had you at any time or have you now any information of any by-law or any rule of the Phœnix Mutual Life Insurance Company, the defendant, directing how assignments of policies shall be made?

Ans. I never had nor have I now any information of any by-law or rule of the said Co. directing how assignments of policies shall be made.

Int. 39. What was the total amount of cash premiums you paid to the company on the policy in controversy?

Ans. My recollection is that I paid about five thousand three hundred ($5,300) dollars.

Cross-examination of same witness, on behalf of defendant, the Phœnix Mutual Life Insurance Company, by Mr. A. E.
107 WILLSON, counsel for def't:

X Int. 1. Who was present when you took out the policy before you made the written application?

Ans. I don't understand the question.

X Int. 2. Who was present when the application was presented to you, as testified by you in answer to question No. 5?

Ans. My recollection is that no one was present?

X Int. 3. Who was present at the time you say the policy came and you again asked the general agent if there was no way your wife's name could appear in the policy?

Ans. No one was present to witness the conversation.

X Int. 4. When was the first time you saw the assignment which you *has* testified you made to your wife after the day on which you made the assignment to defendant endorsed on the policy and received Goodale's draft for the $4,000 in payment for the policy sued on?

Ans. It was some time after I received Goodale's draft. I do not recollect the date.

108 X Int 5. Where was it when you received Goodale's draft?

Ans. I suppose it was with my wife's private papers.

X Int. 6. Goodale left your office when you received the draft, did he not?

Ans. He did.

X Int. 7. Examine the draft Exhibit "R R R," filed with the answer of the company in this action, drawn by A. W. Goodale, adjuster, on said company for $4,000, and state how long you held that draft before you deposited it for collection.

Ans. My recollection is that I deposited the draft the day following. My bank book will give exact date of deposit.

X Int. 8. State whether it was endorsed by you and paid to your order.

Ans. It was endorsed by me and paid to my order.

X Int. 9. Where were you when you wrote your name on it and who was present, and who went with you to bank to deposit it?

Ans. I wrote my name on it in my office; my wife was present; no one went to bank with me to deposit it.

109 X Int. 10. When did complainant, your wife, learn that you had gotten the money on it?

Ans. I do not now recollect that she asked any questions about it. I have no recollection of ever informing her when I got the money on it, and do not know that she learned anything about it in one month.

X Int. 12. Did your wife know before the close of the year 1880 that you had gotten the $4,000 on that draft?

Ans. My recollection is that she did.

X Int. 13. Examine the Exhibit "Q Q Q," filed by the defendant company in this suit, and state by whom the signatures of Wm. G. Harvison and A. B. Cook were written to that paper, and about what date.

Ans. The signatures are those of Wm. G. Harvison and myself. My recollection is that I signed it after the date of 15th August; do not know when Wm. G. Harvison signed it.

X Int. 14. Did he sign it before or after you?

Ans. He signed it before me.

X Int. 15. Examine the written transfer dated June 14,
110 1880, endorsed on the policy sued on in this suit, filed by the defendant company as Exhibit "P P P," and state whether you signed that writing.

Ans. I signed the writing.

Int. 16 Is the application "Q Q Q," the one on which the policy sued on issued?

Ans. Yes.

17. On the 14 June, 1880, from where did you get the policy to surrender it to Dr. Goodale?

Ans. From my private secretary.

18. He wrote the assignment, you signed it, and he gave you the $4,000 draft?

Ans. He did; I signed it.

19. Your wife was present, was she not, when you took the policy from your secretary to hand it to Goodale?

Ans. Yes.

20. And when Goodale wrote the assignment?

Ans. Yes.

21. And when Goodale handed you draft and you signed the transfer and handed him the policy. Who else was present?

Ans. Yes; I do not now recollect that any other person was present.

111 22. Do you remember what day of the week that 14 of June, 1880, was? Was it Monday?

Ans. I think it was.

23. What day did you get home from New York; about how long before that day?

Ans. About four or five days.

24. What day did you get your papers, with this policy, out of Garland's safe; about how many days before you surrendered the policy to Goodale?

Ans. Two or three days.

25. At whose suggestion was the autopsy on Harvison made?

Ans. My own.

26. Who was present besides Drs. Miller, Ronald, and Blackburn; were you there, and who else, *it* to your best recollection, was there?

Ans. I was; my recollection now is that Dr. L. J. Frazer came in during the autopsy.

27. What if any notice was given to defendant company, or any agent of it, that such autopsy was to be held?

Ans. None.

112 28. Said W. G. Harvison married your sister, did he not?

Ans. Yes.

29. You were informed she sought divorce from him for drunkenness and cruel treatment, were you not?

Ans. I saw the notice in the daily paper.

30. How long had you known Harvison; what year did he marry your sister?

Ans. I knew him from my boyhood; do not recollect in what year he married my sister.

31. You and Harvison were intimate friends for many years?

Ans. Yes.

32. Visited each other and were together often?

Ans. I came to Kentucky in 1848, and did not see him often from that time until he came to Louisville.

33. What year did you see the notice of your sister's ground for divorce in the papers; was it not before 1878?

Ans. In June, 1877.

34. When you took this policy out of your desk to hand
113 to Goodale was it by itself or in a bundle of papers?

Ans. It was with other papers in a drawer.

35. When was the first time you talked to your wife about the $4,000 you received for the policy after you had collected it?

Ans. Do not recollect.

36. State the first time you do recollect.

Ans. Spoke to her about the draft after I received it; do not recollect that I spoke to her about the $4,000 after I received it.

37. What year did you first examine applicants for life insurance as medical examiner for any insurance company, and what experience have you had in the business of life insurance?

Ans. Do not recollect; have examined a number of years; for several years before 1872.

38. When you went to Garland's safe in June, 1880, did you get out all the papers you had there; if not, what portion of your papers did you get out?

Ans. I got the package containing all my papers.

39. When you put the policy in Garland's safe was the
114 assignment to your wife with it?

Ans. I suppose it was with her private papers.

40. Do you remember that it was not with the policy?

Ans. It was not in the envelope with the policy.

41. Did you see the assignment to your wife on the same day you sold and transferred the policy to Dr. Goodale for defendant company?

Ans. I did not.

42. When was the last time you saw it before that day, and where was it?

Ans. I have no recollection of seeing it after it was delivered to her.

43. Where did your wife find that assignment?

Ans. She had it among her private papers.

44. Where?

Ans. I had delivered her private papers to her; she kept them in her trunk.

45. How long after Goodale got the policy was it when you learned she had found that assignment?

Ans. I do not recollect.

46. Was it as much as a year? State the best of your recollection.

115 Ans. It was within a year.

47. When, if ever, do you claim Morris first told you that if you did not give up the policy you would not get anything for it? If he gave any reason why state that reason.

Ans. Do not recollect the date. His reason was that the Co. would not pay anything on account of Harvison's habits.

48. In what year, and before or after the day the premium was due?

Ans. My recollection is that it was in the early part of 1880; the premium was not due until Aug., 1880.

49. Where were you when Morris told you that? And state all who were present; fix the date as nearly as you can.

Ans. Do not recollect the place; do not recollect that any one was present; cannot now state the month or day.

50. Have you stated all you can remember as to when it was, where it was, and who were present?

Ans. Have stated all that I can now remember.

51. How do you fix the date as in the early part of 1880,

116 before August 27th?

Ans. Dr. Goodale and Morris called at my office Dec., 1879; it was after that time.

52. That is all you remember of the date, is it?

Ans. It is all I now remember.

53. What year did Harvison come to Louisville, and how long did he live here?

Ans. I think it was in 1869; he left in 1877.

54. Where did he live in 1878 and 1879, and when did he return to Louisville?

Ans. He had no fixed home in 1878 and 1879. He returned to Louisville in March, 1880.

55. What were the names of his wife and their children?

Ans. Mary Jane, his wife; John A., Maryetta, Kittie, Willie, James, Joseph; do not know the names of the younger children.

56. In what year—about what time—did Goodale first see you about surrendering the policy? Whose was it, and who where present?

Ans. In December, 1879, Dr. Goodale and Morris came to

117 my office. I do not recollect that any other persons were present.

57. Was not that visit for the purpose of seeing if the defendant company could not reduce the amount of the policy by reinsuring Harvison for part of it, or to reduce the amount of the policy in some way?

Ans. It was not.

58. When and where was your next interview with Goodale, and who were present?

Ans. At the Galt House the same afternoon. W. W. Morris and S. W. Edwards were present.

59. In what capacity was Edwards present?

Ans. Edwards was present to hear what Dr. Goodale had to say about the surrender of the policy.

60. Was he not present as your lawyer?

Ans. He was.

61. State all the persons you remember as present at any interviews with Goodale in regard to this matter and the places such interviews took place.

Ans. Morris, J. W. Edwards, my wife and daughter; at the Galt House and my office.

118 62. Did your wife, sitting near you when you were asked the last question, suggest the name of your daughter in your hearing after the question was propounded? Is it your daughter or hers?

Ans. Her daughter—my step-daughter. She mentioned her daughter's name.

63. At how many interviews with Dr. Goodale and yourself was Judge Edwards present?

Ans. I now recollect but one, at the Galt House.

64. At what interview or interviews was your step-daughter present?

Ans. My recollection is that she was present at one in Jan., 1880, and in June, 1880.

65. In the interview at the Galt House you went to call on Goodale, your lawyer with you, did you not?

Ans. Yes.

66. Was your wife present at any interview with Dr. Goodale when Judge Edwards was present?

Ans. She was not.

119 67. Did you not in any of those interviews in the presence of your lawyer, Judge Edwards, tell Goodale you would take $2,800 for the policy?

Ans. I have no such recollection.

68. Have you a recollection of making any offer as to what you would take, by yourself, or through your lawyer, at that time for the policy or its surrender to the company?

Ans. Have no recollection of offering to take any specific amount by myself or through my lawyer.

69. You had interviews of Judge Edwards and Morris and yourself when Goodale was not present, did you not, about the surrender of this policy?

Ans. I did.

70. Did you not in person or by attorney make any offer in the interview at the Galt House, or any interview, as to what you would take for the policy or its surrender?

Ans. Do not recollect that I made any offer, or ever authorized my attorney to make any such offer.

71. Did not Morris make you offers and you made Morris offers for the purchase of that policy?

120 Ans. Morris made offers, but I never consented to take any

offers he made. I offered to return the policy if the Co. would refund the money I had paid on it and my notes.

72. When and where was that interview at which you testified you told Goodale never to come to your office again to talk about surrendering that policy, who were present, and how long was it before June 14, 1880?

Ans. At my office; Goodale and myself; about four days.

73. Did not Judge Edwards at the Galt House interview advise you that you could recover from the company for the surrender of the policy the money you had paid after the divorce suit was filed against Harvison and notice published that intemperance was the ground, and advise you to accept that amount, and did not you at the same interview, or about that time, offer Goodale to accept that amount for the policy?

Ans. Have no recollection of such advice or offering to accept that amount from Goodale.

74. When did you offer to return the policy to the com-
121 pany if they would pay your money back?

Ans. About the years 1875 and 1876.

75. Had your wife before you surrendered the policy to Goodale to your knowledge consulted counsel or sought advice from any one about what her course should be if you should sell the policy?

Ans. She had not.

76. What was the date of your marriage with complainant?

Ans. About the 22nd February, 1872.

77. When and where was the interview with Goodale in which you have testified in answer to question (direct) 20 that complainant told Goodale that the policy was her property?

Ans. At my office in June, 1880, is my recollection.

78. Who was present at your interviews with Morris testified to by you in answer to direct question 27 when you offered to surrender the policy for cancelment in August, 1877?

Ans. I do not recollect that any one was present as witness to the interviews; other persons may have been in his office.

79. Did your wife know of that offer to surrender the policy?
122 Ans. I do not remember that she knew it.

80. From who- did you first learn of Harvison's drinking?

Ans. I saw him on the street. Morris also informed me that he saw him drunk on the street, and that Harvison was about to fight him, Morris.

81. Is it not true that complainant, your wife, is a lady of exceptional strength of will, determination, and business capacity?

Ans. She is, but do not know that she is exceptionally so.

82. Did not your wife know all the time that you were negotiating or being talked to about the surrender of this policy?

Ans. She did know of it.

83. When and where did Morris tell you he saw Harvison drunk and about to fight him? Who were present when he told you this?

Ans. It was in 1875 or 1876; I think it was on Main street; my wife was present.

84. Were you not in June, 1880, engaged in the practice of your profession and attending to business when in Louisville?

123 Ans. I was practicing and attending to so much of my business as my health would permit.

85. Were not your journies to New York, to which you have testified, made on business?

Ans. At the urgent solicitation of the faculty of the medical school I agreed to finish a course of lectures; I did it on the condition that I would be given a rest if I so desired. I went to New York to the medical convention and to get a respite.

86. Did you not, at the office of Judge Edwards, your lawyer in this matter, agree with Morris, or [on] one occasion when this matter was being discussed, that you would take a certain sum for the policy and would leave the offer open till some later day, or Wednesday of the following week, provided, however, that if Harvison was sick or dead you should not be bound by the proposal?

Ans. In answer to this question I would say that after Dr. Goodale's visit in Dec., 1879, Morris urged me to settle the policy,

124 stating that the Co. had learned that Harvison was divorced, one of the causes alleged being drunkenness; that if I did not settle the Co. would not pay me anything. After Dr. Goodale's visit, in Jan., 1880, Morris became more persistent in his demands for a settlement. I had asked Morris where Harvison was. He first stated Harvison was at Meadville, Pa., then at Tipton, Pa., then at Canton, Ohio; before the interview Morris had stated to me that Harvison was sick at Canton. I wanted to know of Morris why he was so urgent about the settlement. I told Morris I wanted to know something more about the matter. Morris himself suggested, about the time, if Harvison was sick or dead. I said that I was not satisfied, and my recollection is that I did not agree.

87. Did you never agree with Morris, in 1879 or 1880, before the sale to Goodale and in the presence of Judge Edwards, either at Edwards' office or elsewhere, that you would sell that policy for $2,500, or some amount between $2,000 and $3,000, and was not such

125 proposal made on or before Saturday, and to be left open for acceptance till on or about the following Wednesday? Can you state that you did not make such an agreement?

Ans. My recollection is that Morris was very persistent and urgent for me to make such settlement, but that I never consented to it, but stated that I would let him know whether or not I would accept the offer.

88. At how many interviews with any officer or agent of the defendant about the surrender of this policy was Judge Edwards present as your attorney? Was Judge Edwards ever your wife's attorney in this matter?

Ans. I now recollect that Judge Edwards was present at three interviews. I do not know that Judge Edwards was ever my wife's attorney.

89. Where were those interviews and when?

Ans. At the Galt House in Dec. 1879, at Edwards' office and my office in February, 1880, is my recollection.

90. When did you tender your wife, if ever, the $4,000 you received for this policy?

126 Ans. I tendered her the draft I received from Dr. Goodale after he left my office.

91. Who was present, and was it tendered to her in writing or verbally?

Ans. I do not recollect that any one was present. I endorsed the draft; tendered it to her; she positively refused to accept it; said she would sue the Co. for the policy after Harvison's death.

92. Do you recollect so that you can state it as a fact that the assignment to your wife was not in the same bundle of papers with the policy when the policy was put in Garland's safe?

Ans. Her papers were put in the same package with my own, and my belief is that the assignment was with her papers.

93. Did you have the policy before you when you wrote this assignment to your wife?

Ans. I did.

94. Did she take the policy and assignment together from you?

Ans. She did.

95. Were they in one envelope?

Ans. They were not.

96. Don't you know where she kept them from that time

127 until you got them in your possession, or either of them?

Ans. She kept them part of the time with her other papers in her trunk, and part of the time they were with her other private papers in a drawer in my private secretary.

97. Did your wife consult you about bringing this suit or engaging counsel to bring it?

Ans. She did not.

98. Was the assignment to your wife usually kept with the policy; if not, why not?

Ans. It was kept with her papers, but not in the same envelope with the policy; why, I do not know.

99. Did not your wife have free control of any of her business or papers which she desired to control?

Ans. She generally did.

100. If she had requested you to give the policy into her hands, or not to dispose of the policy, would you have disregarded her request?

Ans. She did protest against me giving up the policy, and I did not regard her protest.

128 101. Have you, in any instance you can now recall, acted against her wishes in matters which she alone had the right to control?

Ans. I have acted against her wishes.

102. Was the assignment in the same drawer with the policy in your desk when you took the policy out to hand to Goodale?

Ans. My belief is that it was with her other private papers.

103. Was it not conceded at the Galt House interview, as a fact established in the divorce case and known to you, that the policy was void because of Harvison's habits of drinking liquor?

Ans. At that interview Dr. Goodale showed me a copy of the application for insurance on Harvison's life, and said to me that it was void, of no account, but I have no knowledge that it was established as a fact.

104. Are you not a brother of George J. Cook, a witness for your sister, Mrs. Harvison, in her divorce suit, and had you not a- good a chance to know Harvison's habits as he?

Ans. I am; I did not.

129 105 What was the paper which you consulted during this cross-examination?

Ans. It was a memorandum of dates taken from my physician's diary, and letters and papers.

106. Have you it, and are you willing to produce it for examination?

Ans. I have no objection to you seeing it.

107. Who wrote that paper, for what purpose, and have you not referred to it a number of times during this examination before answering questions put to you?

Ans. I wrote that paper. I referred to it to remind me of dates during the examination.

108. Did you or Judge Edwards have the policy with you at any of the interviews with Morris or Goodale when Judge Edwards was present?

Ans. My recollection is that Judge Edwards saw the policy at one time; have no recollection that Judge Edwards saw it at any of the interviews; have no recollection that either of us had the policy at any of the interviews.

R. D. 1. In your answer to X Question 79 you say you didn't know if your wife knew of your offer to surrender the policy.

130 Did you mean to say that your wife never knew, or she didn't know before you offered to surrender it?

Ans. I mean she did not know before I offered to surrender it.

2. When did she first learn and of whom did she learn that you had left the policy with Morris for surrender?

Ans. She came to me and said Morris had sent a message to me to come to his office and pay the premium and keep up the policy.

3. You were asked in cross-examination if your wife, who is present, did not suggest the name of your step-daughter as being present at a certain interview; state whether or not you would have remembered that fact if she had not mentioned the name, and if it is true that your step-daughter was present at that interview.

Ans. I would have remembered the fact. My step-daughter was present during nearly all the interview.

4. You were asked in cross-examination about an interview between Morris, Judge Edwards, and yourself at your office re-

131 garding the surrender or sale of this policy; state whether or not your wife was present or came in during that interview, and what she said consenting to or protesting against the sale or surrender of the policy?

Ans. My wife came in during the interview and said sharply to

Morris: That policy was taken out for my benefit and belongs to me, and you know it, and I will never consent to any compromise.

A. B. COOK.

Second Deposition of A. B. Cook in Rebuttal.

Second deposition of A. B. Cook, who, being sworn, testified:

Int. 2. How long was the matter of taking a policy on the life of W. G. Harvison discussed by you and Mr. Morris and Mrs. Cook, the complainant, before it was finally concluded on?

Ans. For two or three months.

3. Mr. Morris has testified as to an interview between you and him and Mrs. Cook which occurred on the stairway of a building on 6th and Main, in which he had his office, in which he stated that Mrs. Cook came up and joined you and him while in con-
132 versation, and said if you gave up the policy for $3,000 you could never call her your wife again; say whether or not said statement of Mr. Morris is true, and state what occurred and what was said in that conversation as nearly as you can remember it?

Ans. Mrs. Cook made no such statement; Mrs. Cook and myself were at my buggy opposite the stairway of the building, cor. 6th and Main. He saw *you*, but did not as usual come up to speak; he started up the steps; I called to him and said I wanted to see him; Mrs. Cook and myself then walked up two or three steps. I said to Morris, I came to tell him I would not settle; that the policy belonged to Mrs. Cook, and I could make no settlement; Mrs. Cook then said to Morris, the policy had been assigned to her and he knew it; that the company had heard that Harvison was very sick and about to die, and pretended to put it on the plea of drinking and cheat her out of the policy, and that it was a very unprincipled thing in him to try to defraud her out of the policy.

133 4. Dr. Goodale has testified that you told him that you knew Mr. Harvison drank a great deal; state whether or not you so told Dr. Goodale, and state what you said to Dr. Goodale on that subject.

Ans. I did not so state to Dr. Goodale; I told Dr. Goodale that I had twice seen Harvison under the influence of liquor, that I had informed Morris of the fact, and that Morris knew as much about Harvison as I did.

A. B. COOK.

Deposition [of] Dr. G. W. Ronald.

Dr. G. W. Ronald, being duly sworn, testified as follows:

Int. 1 What is your profession, and how long have you been engaged in the practice?

Ans. Have been engaged in the practice of medicine since 1850 or 1851, I think, but am not certain—1851, though, I think.

2. Did you or not, on the 26th day of August, 1880, attend as

physician the post-mortem examination of Wm. G. Harvison, dec'd, at the office of J. C. King, undertaker, in Louisville?

Ans. I attended the post-mortem examination; I can't re-
134 member the date, but I think it was at that time.

3. Name, if you please, the other physicians and surgeons who attended and took part in the examination.

Ans. Dr. Cary Blackburn, Dr. Miller, the coroner; Dr. Cook, and, I think, Dr. Frazee was present.

4. From the autopsy what was developed as to his condition internally and the cause of his death?

Ans. There was some effusion of cerum and bloody matter in the left plural cavity; the stomach, intestines, liver, and kidneys were in healthy condition. The right lung was in a state of complete hepatization; the upper lobe of the left lung partially hepatized; there were clots of blood in the pulmonary artery extending an inch and a half or two inches up the artery; this, I think, was the immediate cause of his death.

5. When the habit of drinking spirit-ous liquors conduces to cause, or causes, disease, what organs are attacked most generally?

Ans. I think it is generally conceded that the liver is the organ generally attacked, producing also, I should suppose, chronic
135 inflam-ation of the stomach. Constant drinkers sometimes die of what is called hob-nail, which is a hardening of the different portions of the liver.

6. Did you know anything of the habits of Wm. G. Harvison?

Ans. I did not.

7. From your knowledge of medicine and the effect upon the human system from the habit of drinking, and from your knowledge acquired from the autopsy on Wm. G. Harvison, was or not his death caused, or indirectly, proximately, or remotely, by the habit of drinking spirit-ous liquors?

Ans. That is a very difficult question to answer. I can only state that a man who never drank a drop of liquor in his life might die under the same circumstances as Mr. Harvison died; then again one who had drank might also die under the same circumstances. Not knowing anything of Mr. Harvison's habits I cannot say whether or not such was the cause of his death. I will add that the liver and stomach being found in normal condition would
136 lead me to suppose that he did not die from excessive use of ardent spirits; though, as I have already said, I could not be certain.

8. In the condition of the liver and stomach, as developed in the autopsy, did you discover any signs or symptoms which indicated to you that Harvison had been in the habit of drinking to any extent, or to what extent?

Ans. I did not discover any.

Cross-examination of same witness by defendant's counsel:

X Int. 1. Was this an inquest held by the coroner officially?

Ans. I cannot say. If it was I never heard of it.

2. By whom were you summoned or requested to attend that post-mortem examination?

Ans. By Dr. A. B. Cook.

3. For what purpose did he inform you that the examination was to be held?

Ans. I cannot say positively that he said what was the reason of holding the post-mortem. He remarked that Mr. Harvison
137 had died and he wanted me to be present at the autopsy.

4. Did any one inform you why a post-mortem examination was to be held, or being held, over this man, or what fact it was desired to ascertain from such examination; if yea, who, and what information?

Ans. No one did that I recollect of. If any one did it was Dr. Cook, and I don't think he did. He was the only one I spoke to on the subject. No one spoke to me in reference to what fact it was desired to ascertain.

5. Was the question as to whether Harvison had been addicted to the use of spirit-ous liquors mentioned to you before or during the examination; if so, by whom, and what was said?

Ans. I think that upon one occasion previous to his death Dr. Cook said to me that the agent of the company had said to him that Harvison was drinking too much, or something to that effect; I cannot be positive as to the exact words.

6. In making this examination was the body cut open, and
138 were the organs taken out; was the heart examined; if so, what was the condition of the heart?

Ans. The incision was made from the upper part of the sternum, I think, to the lower part of the abdomen, but I will not be certain whether it extended to the lower portion of the abdomen or not. I know the ribs were disconnected and thrown back. I cannot say whether or not the organs were taken out. The heart was examined, but I can't say positively whether it was removed from the cavity or not, nor can I state as to the pathological condition of the organ, with the exception of blood clot in the pulmonary artery.

7. Were the symptons of Harvison in his last sickness related to you; if so, by whom and what symptons?

Ans. They were not related, sir, at all.

8. Did you discover at the autopsy signs of dropsy, or swelling of the legs or feet?

Ans. I am under the impression there was a swelling of the legs and feet. I did not mean to imply general dropsy.

9. Would you not ordinarily in cases of such swelling of
139 the legs and feet suspect heart disease, and on a post-mortem examination examine the heart?

Ans. I would suspect either heart disease, disease of the liver, or kidneys.

10. Did you discover on examination of the heart whether there was any appearance of enlargement of the heart?

Ans. Dr. Miller conducted the examination. My attention was not called to any of the organs as minutely as would have been

done had I been conducting the post-mortem. My attention was called more particularly to the clot in the pulmonary artery.

11. Then you did not make a particular examination of body or any of the vital organs?

Ans. I did not conduct the examination. I was a spectator.

Redirect examination by the plaintiff's attorney:

Redi. 1. In looking on at the examination did you or not see enough of the heart and liver to satisfy yourself that those organs were in normal condition?

Ans. I don't say as to the heart; there was a blood clot in
140 the pulmonary artery. The liver was in normal condition is my recollection.

G. W. RONALD.

Deposition [of] L. J. Frazee.

L. J. FRAZEE, being duly sworn, testified:

Int. 1. What is your profession, and how long have you practiced it?

Ans. I am a physician; I graduated in 1841; I commenced forty-one years ago.

2. Did you or not, on the 26th day of August, 1880, attend, as a physician, a post-mortem examination of Wm. G. Harvison, dec'd, at the office of J. C. King, undertaker, in Louisville?

Ans. I cannot say in regard to the exact date, but did attend the post-mortem examination just named at or about that time and at that place.

3. Name, if you please, the other physicians and surgeons who attended and took part in that examination.

Ans. The examination was made principally, if not entirely, by the coroner, Dr. Miller. There were present Dr. Cary Blackburn, Dr. Geo. Ronald, Dr. A. B. Cook, and myself.

4. From the autopsy what was developed as to Harvison's condition internally and as to the cause of his death?

141 Ans. We found extensive disease in the lungs; my recollection is that the right was hepatized in nearly its whole extent, and the upper lobe of the left lung was also hepatized. There was a clot in the pulmonary artery. My opinion is that the immediate cause of his death was the clot in the pulmonary artery, and that that was the result of the condition of the lungs named above. There was extensive adhesion of the pl-ura on the right side.

5. What was the condition of the liver and kidneys?

Ans. The liver seemed to be in a normal condition. As to the kidneys, I have no recollection as to their condition, if examined.

6. Where the habit of drinking spirit-ous liquors conduces to cause or causes disease what organs are attacked most generally?

Ans. Well, I will have to give some explanation; I just want to give my opinion. Any organ predisposed to disease at the time would be more likely to take on disease than other organs; but

where death ensues from the intemperate use of liquor or
142 ardent spirits we usually expect to find diseased stomach and liver; other organs may be involved, but these, I think, most usually.

7. Did you know anything of the habits of Wm. G. Harvison as to drinking?

Ans. I knew Mr. Harvison for a number of years, and have seen him under the influence of liquor, as I thought, without any question, but how often I will not pretend to say. My impression, however, is not more than two or three times.

8. From your knowledge of his habits, from your knowledge of medicine, and from your knowledge of his condition acquired at the autopsy, and from what you saw of him during his last illness, I will ask you to state whether, in your opinion, Mr. Harvison's death was caused directly or indirectly, proximately or remotely, by his habit of drinking spirit-ous liquors.

Ans. Before we commence I want to make an explanation. I am clearly of the opinion that the immediate cause of Mr. Harvison's death was the clot in the pulmonary artery, but that
143 was the result of the condition of the lungs. What was the immediate cause of that condition of the lungs I have no means of knowing. He was absent from here for some time—I think for as much as two or three years. I saw him soon after his return and he was then in a diseased condition, but how long he had been so, or what the immediate cause, I am unable to say. I have just — my reasons why I cannot give a positive answer to that question.

9. Might not a person die from the cause which you discovered produced his death who did not drink at all?

Ans. Undoubtedly so.

10. In the condition of the liver and stomach of Mr. Harvison, as developed by the autopsy, did you discover any signs or symptons which indicated that he had been in the habit of drinking to excess?

Ans. None.

11. Did you attend Mr. Harvison in his last sickness while at the infirmary in Louisville?

Ans. His regular physician was Dr. Cary Blackburn. I saw
144 him, however, a number of times while there with Dr. Blackburn, and also alone at Dr. Blackburn's request.

Cross-examinations by defendant's counsel:

X Int. 1. At whose invitation, Dr., did you attend the post-mortem examination?

Ans. I cannot say positively whether it was Dr. Cook or Dr. Blackburn, but my impression is it was Dr. Cook.

2. How did that post-mortem examination come to be made, for what purpose was it made, at whose request, to what point was the attention of the Drs. present directed in making the examination, and if to any, by whom?

Ans. I do not know how it came to be made. I do not know for what purpose. I cannot say at whose request it was made. The

post-mortem examination seemed to be conducted in the usual manner; the lungs were freely exposed and cut into; also the heart and pulmonary artery. Having found sufficient cause and the evi-
dent cause of death, the remainder of the examination was
145 less minute. The abdominal organs, however, were freely exposed, the liver cut into and examined, as was also the stomach. If the kidneys or other organs were particularly examined it has escaped my memory. I do not recollect that any one particularly directed the course of examination. My recollection is that several of us present made suggestions as we saw fit.

3. Was the question considered or mentioned at the examination as to whether Harvison's intemperance had or might have affected any organ or organs; if so, who mentioned that subject, and what did he say?

Ans. I have no recollection of any conversation having taken place at the time in regard to the question named.

4. Were you subpœnaed as a witness here?

Ans. No, sir.

5. Who came to ask you to come to testify in this case?

Ans. Dr. Cook notified me.

6. Has there been any conversation or meeting of the doctors who were present at the post-mortem, or any of them, with
146 Dr. Cook since the post-mortem to consider or talk over what the post-mortem developed, and whether it developed anything bearing on the question of Harvison's intemperance affecting his condition or that of any of his organs; if so, who were present and at whose request?

Ans. If there was any formal meeting of the physicians who were present I know nothing of it. I wish to say that I have spoken to both Dr. Cook and Dr. Blackburn separately about what this examination developed.

7. How long after the post-mortem before the subject of what it showed as to Harvison's intemperance was ever mentioned, so far as you know or heard?

Ans. I think that Dr. Blackburn and myself had some conversation in regard to the post-mortem soon after it occurred, but I have no recollection of having had any conversation with Dr. Cook on the subject until the last day or two, when he notified me that he wished me to give a deposition in this case.

8. Did Dr. Blackburn and you, in the conversation you
147 have mentioned in the last answer, say anything about Harvison's intemperance or its effects?

Ans. I do not recollect whether that matter was mentioned or not.

9. Do you recollect anything that has occurred since you were asked to attend the post-mortem to call your attention to any features of the post-mortem which would be significant to a physician as to whether intemperance had produced any effect perceptible in the post-mortem examination of his remains; if so, what has occurred?

Ans. I know of nothing except a conversation recently had with

Dr. Cook in regard to the case, which I had for the purpose of refreshing my memory as to the particulars of the post-mortem.

10. When was that conversation?

Ans. Yesterday was the first time we had a conversation on the subject recently, and in fact it is the first I recollect we ever had at all.

11. What authority or right was given and by whom, so far as you know, to hold that post-mortem?

Ans. I don't know by whose authority or at whose suggestion.

148 12. What were the symptoms of Harvison at the time you saw him at the infirmary shortly before his death?

Ans. There was dropsical effusions in the lower extremities, nausea, and great inability to rest—to sleep. He had had previously vertigo; those were the striking symptoms.

13. About what year was it you saw Harvison under the influence of ardent spirits?

Ans. I cannot fix the time exactly, but it was before he left here the last time. I would suppose as much as two or three years before his death. After his return here I never saw him under the influence of liquor, to the best of my knowledge.

14. In what way did he show that he was under the influence of liquor at the times you mention, and was it or not as long ago as August 27th, 1872?

Ans. By his excited manner and conversation, which was unusual with him, he being, under ordinary circumstances, a polite and genial gentleman. As I said before, I have no means of fixing the time. I can say, however, that it was whilst he was attend-

149 ing to business in a stocking factory in the upper part of the city.

15. Is it not your best impression that it was after the year 1872?

Ans. I can recollect the circumstance, but cannot fix the time.

16. What was the condition of his pulse when he was in the infirmary?

Ans. I cannot say.

17. Do you remember whether it indicated any difficulty of the heart to your mind then?

Ans. I have no recollection that it did.

18. Did Harvison, at the times you saw him when he was under the influence of liquor, manifest symptoms of mani- [*a*]*portu* or delerium tremens?

Ans. I think not.

19. Did you treat him at that time as a physician?

Ans. No, sir; I think he was not under treatment at all.

20. Where was he—in the house or on the street—at those times?

Ans. I met him frequently, and saw him both in the house and on the street; but the particular time to which I have reference as

150 to his being under the influence of liquor more decidedly than at any other was in his place of business in the stocking factory.

L. J. FRAZEE.

Deposition [of] J. W. Edwards.

J. W. EDWARDS, being duly sworn, testified:

Int. 1. State your name and profession and your present position.

Ans. J. W. Edwards, name; lawyer; chancellor of the Louisville chancery court.

2. State whether or not at any time and when, as near as you can remember, you acted as counsel and adviser of Dr. A. B. Cook in the matter concerning the assignment or surrender of a policy taken out by him in the Phœnix Mutual Life Insurance Co. on the life of W. G. Harvison, wherein the controversy arose between A. B. Cook and said company or its agents.

Ans. I did some time in the latter part of 1879 or the early part of 1880 is my recollection; perhaps earlier than I have stated; certainly in 1879 or early in 1880.

3. With what officers of the company did you and Dr.
151 Cook communicate or correspond?

Ans. Our interviews were with Mr. W. W. Morris, of Louisville, an agent of the company, and a gentleman introduced to me as Dr. Goodale, a gentleman professing to act for the company; I do not know his position.

4. Do you know whether those interviews were had with them before the policy was assigned or surrendered by Dr. Cook?

Ans. I do; though I did not see the policy assigned or surrendered; I know from coversations between the parties at the time.

5. How many of those interviews did you have with Mr. Morris and how many with Dr. Goodale? State where these interviews took place.

Ans. My recollection is I had several interviews with Mr. Morris; can't state the exact number; one I remember on 6th street, between Jefferson and Main streets, two or more in my own law office, and one at the office of Dr. A. B. Cook, in this city. I recollect one inter-
152 view with Dr. Goodale at the Galt House definitely; whether I had a second interview with him personally I am not positive, but believe I did; do not recollect any one being present at the interview on 6th street, nor at my office, unless my then law partner, C. B. Seymour, except I remember Dr. Cook was present at one or more of the interviews at my office, and Dr. Cook and Mr. Morris were present at the Galt House interview the first time, and if I had a second interview they were present, I presume. Dr. Goodale was not present at my office at any interview. I had an interview at Dr. Cook's office, at which Mr. Morris was present, and during the interview Mrs. Cook and her daughter came into the office. I remember no one else as present.

6. What was the matter in controversy, and what the purpose and purport of the interviews to which you have referred between the parties?

Ans. The first interview was the one at the Galt House, to
153 which place I went with and at the request of Dr. Cook, as I learned from the parties concerned some years prior to that time the company named had issued a policy upon the life of a

brother-in-law of Dr. Cook, named Harvison, taking a risk to the extent of $20,000, if I remember aright, the premium on which, up to that time, had been paid by Dr. A. B. Cook, which, with interest, amounted to about $5,000, if I recollect aright. Dr. Goodale, for the company, insisted that the policy had been procured upon false and fraudulent statements made by the assured as to his habits in regard to intoxicating drinks. Dr. Cook claimed that he had acted in perfect good faith in the matter, and that Mr. W. W. Morris, who had procured the risk, knew more of the personal habits of the assured than he did. The effect or purport of the interview was, on the part of the company, to secure the surrender and cancellation of the policy upon the payment to Dr. Cook of a part of the money received from him as premiums, claiming, however, that any money so paid or refunded was a mere gratuity; that the company was
154 not bound by the policy nor bound to return any of the premiums, Dr. Cook claiming the exact contrary. At the first interview Dr. Goodale offered, if I recollect aright, $1,500. For Dr. Cook I insisted that if the policy had never been enforceable for the reasons stated the company should at least return Dr. Cook all the money it had received from him, and perhaps I insisted for interest also. I remember stating that under the facts stated, about which I had no knowledge, I could never consent to advise Dr. Cook to accept the offer or to consider any offer less than $3,000, and Dr. Cook declined the offer made, and that ended the interview.

7. In the subsequent interviews with Mr. Morris was the negotiation for the purchase or surrender of the policy continued by Mr. Morris on behalf of the company and he representing the company? Please state what subsequent offers were made by Morris and whether or not they were accepted or rejected by Dr. Cook.

Ans. It was. He represented the Co. in a certain sense, but
155 he did not profess to have any authority to make the compromise, but seemed anxious to see the compromise effected, and acted as a medium or go-between to that end. I am unable to state exactly what subsequent offers were made, but I know Mr. Morris urged the settlement or adjustment, and after consulting me on the subject communicated with the company by telegraph, and received a response, which he showed to me at my office, the amount being an increased amount, perhaps $2,500 or $3,000; I don't recollect exactly. At any rate, it was such an amount as I advised Dr. Cook to accept under all the circumstances from the facts and lights I then had, and I thought he would do so, and so stated to Mr. Morris; but when the test came he declined and refused, and I remember after his refusal, as Morris told me, at Morris' request and with him, I went to Dr. Cook's office, when the interview at that place heretofore named occurred, in which Morris insisted that Cook had agreed
156 to accept the amount the company had agreed to, and Cook denied that he had ever agreed to accept it and refused to accept it.

8. In the interviews and negotiations of which you have spoken did you act for or represent Mrs. Fannie M. Cook, the complainant, as agent or attorney?

Ans. I certainly did not so understand it, but during the time of these interviews Mrs. Cook talked to me several times on the subject.

9. You have mentioned that Mrs. Cook, the complainant, with her daughter, came into Dr. Cook's office while you and Dr. Cook and Mr. Morris were having an interview on this subject. Will you please state what she then said to Mr. Morris and in his presence as to the ownership of the policy and as to Dr. Cook's assigning it or surrendering it?

Ans. It is impossible for me now to state exactly what Mrs. Cook said, but I remember she came into the office with her
157 daughter and in an excited manner opposed any settlement or adjustment of the matter, claiming that she owned the policy; that it had been assigned to her.

10. State whether or not Mrs. Cook in that interview stated to Morris that he knew the policy had been taken out for her benefit and assigned to her accordingly, as he had directed Dr. Cook how to make the assignment.

Ans. She stated that in substance. She claimed the assignment had been made to her through the agency of Mr. Morris as her friend, and she complained of his trying to adjust the matter contrary to her wishes. The assignment was not produced.

11. Please look at the paper I now show you, marked on its bottom or its face "R. C. K. 1," and which has been made part of the deposition of Dr. A. B. Cook, and state whether or not Mrs. Cook showed you this paper pending those negotiations.

Ans. I had never seen this paper at the interview last
158 named so far as I now remember, but my best recollection is that Mrs. Cook subsequently showed me this paper at my office; brought it around there and showed it to me. Of this I am not positive. It was very shortly after that interview at Dr. Cook's office; it may have been the next day. Aside from information obtained from the interview at Dr. Cook's office, I am unable to say with certainty whether my knowledge of that assignment is from hearing Mrs. Cook talk about it, as she talked to me repeatedly about it, or from an inspection of it.

Cross-examination:

X Int. 1. Has Dr. Cook requested you to give your deposition in this case or been to see you about giving it?

Ans. He has both been to see me and made the request within the last week.

2. When and from whom did you first learn that the company had purchased the policy of Dr. Cook?

Ans. I am unable to give the date. It must have been shortly after it was done. I have no recollection definitely, but have
159 no doubt I got the information from Dr. Cook or his wife, or from both. I may have gotten it from Morris.

8. State whether complainant, Mrs. Cook, to your knowledge, either personally or from her statement, consulted counsel as to her course in regard to this policy in case of its sale or surrender before the surrender to the company.

Ans. I cannot say that I do. She never consulted me as to that point, and I know from her statement that she was in consultation with Col. Mundy, and perhaps with Mr. Roberts; as to the exact time I obtained this information from her I am unable to say.

4. Please give the explanation in regard to number of times complainant has seen you and talked to you about this matter substantially as you gave it to counsel in explanation of your last answer?

Ans. I never represented Mrs. Cook as her attorney separate from being Dr. Cook's attorney. I was Dr. Cook's regular attorney
160 in other matters, and in all the matters I attended to for Dr. Cook as attorney Mrs. Cook always took a deep interest, and came to see me frequently in regard thereto, and with reference to the policy in question she talked to me a great deal, not less than 20 interviews, I would suppose, though I would not fix the number. These interviews began from the time of my first interview at the Galt House until after I heard of the sale of the policy, but how long after I am unable to say. I have not had any interviews with her on that subject until within the last week. In all her interviews concerning the policy she opposed my views in regard to a compromise, and opposed Dr. Cook making the compromise. At my instance I requested her to consult other counsel, as I did not wish to advise with her on the subject. She and I differed so widely that I advised her to consult other counsel.

161 5. Is it not a fact that complainant has talked over this matter with you so much that it is difficult, if not impossible, for you to distinguish between what you remember to have happened and what she has stated to you has happened?

Ans. In some particulars it is and in some it is not.

6. About how many times since June 14, 1880, do you think complainant has talked to you about this case or this policy?

Ans. I am unable to say, but I am confident that she talked to me very seldom, if at all, after that date, during that or the two succeeding months, and my recollection is that Mrs. Cook has talked to me but very little since that day, if at all. I am satisfied that she had no consultation with me after that time; she has likely mentioned it to me incidentally on the street.

7. Has Dr. Cook talked it over with you lately in complainant's presence?

Ans. I do not remember any interview with Dr. Cook on the subject since the summer of 1880 until within the last week,
162 when he and his wife called to see me, informing me that they wished my deposition—when they each asked me a number of questions in regard to my recollection as to matters they desired information upon, some of which I then answered, and others I replied I preferred to think over the matter and answer when I was examined, because I had not had the matter upon my mind for a long time and wished to refresh my recollection.

8. Is it not true that your impressions derived from what Dr. and Mrs. Cook told you inclined you to acquiesce and believe in their statements to you as to what they remembered to have occurred in the interviews?

Ans. I am inclined to think not, but I recognize the possibility of my memory being to some extent refreshed and perhaps influenced by what they suggested. I certainly tried not to be so influenced; my mind was rather on the defensive.

9. Can you state from memory the complainant's language
163 in any of the interviews of which you have testified in direct examination?

Ans. I think not.

10. Is it not true that at the interview with Morris, in which Mrs. Cook came into the office with her daughter and excitedly opposed settlement, her manner and bearing was such as to get Morris excited, and cause such a state of affairs that you left the room?

Ans. Morris was excited before she came in—he and Dr. Cook both, to some extent—and her talk increased the excitement of Mr. Morris, I think, and my recollection is that Morris and I both got up and started, but I am not positive about this; he went one way and I the other.

11. Was the character of the conversation after Mrs. Cook entered such *as* those present would be likely to remember accurately Mrs. Cook's words? Was not the talking fast, violent, and angry?

Ans. It is difficult to say; the talking was not boisterous;
164 it was excited—rapid as far as Mrs Cook talked. Morris talked excitedly, but in a manner such as a gentleman would treat a lady.

12. Had you written or given a form for the assignment to Mrs. Cook?

Ans. I think not; if I had I have no recollection of it; my recollection is pretty decided that I did not.

13. Your recollection is clear, is it not, that Mrs. Cook at that interview opposed settlement or adjustment of the matter?

Ans. It certainly is, and at every other interview before the sale, unless settlement was made with her; she was determined to boss the job as far as she gave any expression.

14. Was her manner and bearing that of a woman in fear of her husband, or governed by his plans or will in this or any matter in which she had the right to control?

Ans. I am not sure that I am capable of answering the question; so far as I observed I would say it was not; I saw nothing that would indicate anything to influence her action other than her own will.

165 15. Is your recollection so clear that you can say from memory, not refreshed from conversations of Mrs. Cook or her husband, that in that interview she stated before you left the room that she owned the policy?

Ans. I think it is, except that I think she used the word assigned or transferred; I don't mean to be positive as to the exact word; my memory is very distinct, and I don't think that I can be mistaken, that she said the policy had been assigned to her, but it is possible I might be mistaken on that point, though I think I am not, for I know she talked to me about it having been assigned to her repeatedly before and after that time.

16. Was not what she said at that interview in substance that Dr. Cook had always said the money on that policy should be hers—had promised it to her; can you distinguish what she said from this by memory?

Ans. I think I can; indeed my recollection is that there was no question made as to the existence of that assignment at that
166 interview or any other with me, but she may have used the other language used in the question also.

17. What enables you to fix in your memory that Mrs. Cook said anything about an assignment or transfer in that interview?

Ans. Nothing special, other than the decided manner in which she asserted her right to control the matter.

18. Did Morris profess to have any authority from the company to settle this policy beyond the specific authority in the telegram from the company which he showed you?

Ans. He certainly did not.

19. What did you understand was the reason, if any, complainant did not produce the assignment at the interview?

Ans. No reason was assigned, so far as I recollect; its existence was not questioned. I think she and Mr. Morris had a dispute about some other points, but the assignment was not questioned.

20. Do you remember complainant telling you, after you
167 knew she had engaged her counsel, that she had found an assignment of that policy and was going to sue the company?

Ans. I do not, with reference to that date, at all. I do recollect—at least I think I do—of her bringing me that assignment, and I think it was before the sale, but of this I am not positive, and I am sure she said all the time she would not submit to a settlement unless it was made to her.

21. Was not your understanding that at the Galt House interview Dr. Cook offered to take a certain sum for that policy, and that at another interview, on a Saturday before the telegram authorizing Morris to give $2,500 for it, Dr. Cook did say he would take $2,500, or some such an amount, and would leave the offer open until the following Wednesday, or some later day, with the understanding that if Harvison was dead or sick the bargain should be off, and that Morris offered to send a telegram about this on your suggestion that the divorce proceedings gave some notice of Harvison's
168 habits, and that the three payments after that notice ought to be returned to Dr. Cook?

Ans. Such was not my understanding, as I recollect it. I cannot say that Dr. Cook made the statements named. My recollection is that Morris and Dr. Cook and myself, at my office, prior to the sending of the telegram by Morris, discussed the matter, Morris manifesting considerable anxiety to effect an adjustment, and in what I supposed to be in the interest of Dr. Cook. I endeavored to point out to him the difficulties and dangers by him to be encountered in the event of a failure to settle it, Dr. Cook insisting rather against my views; and I remember distinctly his saying that he wished further information in regard to the health of Harvison before he gave

a decided answer; but, as I understood him, he finally acquiesced in Morris sending the telegram, provided it was not to effect him in the event that Harvison was then dead, or something to that
169 effect, and when the answer came Morris and Cook had an interview, when I was not present, as I learned from them, and Morris came to my office to request me to go with him to say to Dr. Cook what I recollected in regard to his acquiescence, and I complied with his request, and in the interview Morris was very decided that Cook had agreed upon the amount named in the telegram, whatever that was, provided that Harvison was still living, &c., and Cook was just as decided in saying that he had not so agreed, and that occasioned the excitement between Dr. Cook and Mr. Morris at the time Mrs. Cook and her daughter came into the room.

22. Did you or Dr. Cook ever have the policy with you at any of the interviews?

Ans. Not that I recollect; I don't remember ever seeing the policy.

Redirect examination:

1. Did the complainant, Mrs. Cook, ever state to you that she had either lost or found the assignment?

170 Ans. My recollection is that she did say something to me about the assignment having been mislaid, and that when she found it, or claimed to have done so, she brought it around to my office, but my recollection on these points is quite indistinct.

2. Is it or not a fact that Mrs. Cook, complainant, in all the interviews of which you have spoken, claim that the policy had been assigned to and belonged to her?

Ans. That is my recollection, so far as she ever spoke on the subject at all.

3. In the interview you have mentioned at Dr. Cook's office, when Mrs. Cook and her daughter came in, did you not understand Mr. Morris to consent to by not disputing the statements that Mrs. Cook then made to him that the policy had been assigned to her according to his instructions as her friend?

Ans. I can't say that I understood anything particular to that effect.

171 4. Did or not Mr. Morris then dispute or dissent to that statement of hers?

Ans. He neither disputed or dissented is my recollection. I cannot say that he in terms assented. I remember no dispute between them on that point.

Recross-examination:

1. Do you remember, as a matter of memory, that he, Morris, noticed or knew that Mrs. Cook said that the policy had been assigned to her, or anything to that effect?

Ans. I don't remember that he said a word about it. I can't say what he noticed. She certainly said so, and very decidedly.

J. W. EDWARDS.

Deposition [of] Dr. H. C. Miller.

Dr. H. C. MILLER, being duly sworn, testified:

Int. 1. What is your profession, and how long have you been engaged in the practice, and what position do you hold in Louisville?

Ans. I am a physician; have been practicing for the last 18 years. I am coroner of Jefferson county.

2. State whether or not on the 26th of August, 1880, you,
172 as physician, attended and took part in post-mortem examination of W. G. Harvison, deceased, at the office of J. C. King, undertaker, in Louisville.

Ans. I did.

3. Please name what other physicians attended and took part in the post-mortem examination, and state in this connection who made the dissection.

Ans. There were Drs. C. B. Blackburn, G. W. Ronald, L. J. Frazee, and A. B. Cook. I made the principal portion of the dissection, assisted somewhat by Dr. Blackburn.

4. What was the internal condition of Mr. Harvison and the cause of his death, as developed by the autopsy?

Ans. Well, sir, in the thoracic cavity we found the upper lobe of the left lung hepatized or consolidated, also an extensive effussion of bloody cerum in the left pleuritic cavity; also complete hepatization of the right lung with extensive adhesion of the right pleura; also, we found an extensive fibrinous clot attached to the
173 corda tendineæ of the tricuspid valve, the right auricular ventricular opening, this clot extending into the mouth of the pulmonary artery, stopping up the opening of that vessel; found the stomach liver, intestines, and kidneys in a healthy condition. The cause of his death, as developed by the autopsy, was this fibrinous clot, superinduced by pneumonia.

5. Did you understand from his condition that he had lately been afflicted with pneumonia?

Ans. Yes, sir.

6. Did you know him in his lifetime or attend him as physician?

Ans. No, sir; never saw him till the autopsy that I know of.

7. Where the habit of drinking spirit-ous liquors conduces to cause or causes disease what organs are most usually attacked?

Ans. The liver and stomach; frequently the kidneys.

8. From your knowledge of medicine and the effect of drinking upon the human system, and from the knowledge you acquired of Mr. Harvison's condition from the autopsy, was or not his
174 death, in your opinion, caused directly or indirectly, proximately or remotely, by the habit of drinking spirit-ous liquors?

Ans. I could find no evidence to that effect from the autopsy.

9. If Harvison had drank spirit-ous liquors to the extent of injuring his health and causing disease would the condition of his stomach, liver, or kidneys have developed that fact in the autopsy?

Ans. It would have been very apt to have shown some evidence in one or the other of those organs, if not all.

10. Is it or not a fact that where a person drinks spirit-ous liquors to excess and to the extent of producing disease in the system that either the liver, stomach, or kidneys always shows disease?

Ans. Yes, sir.

Cross-examination:

X Int. 1. By whose request and what authority did you make that post-mortem examination?

Ans. At the request of Dr. A. B. Cook. There was no inquest; it was simply at the request of Dr. Cook.

175 2. Did he inform you what fact or facts it was his wish should be ascertained by the examination; if so, what?

Ans. Only to find out the real trouble that he died from.

3. Did he say anything about looking to see whether there were any signs of the use of liquor by Harvison?

Ans. I don't remember now that he did.

4. Was your attention directed at that time to this subject in any way; if so, how?

Ans. I don't remember that it was; I think not.

4. Was not your attention directed to the lungs and heart, and was not the purpose of the examination accomplished when you found the clot?

Ans. It was so far as the death was concerned; it showed the cause of death.

6. Did you take out the stomach or liver or kidneys, or make anything more than a slight or cursory examination of either?

176 Ans. We did not remove those organs from the body—simply examined the organs as they remained in the body.

7. How many times has Dr. Cook been to see you about giving your deposition in this case, and when as near as you can remember?

Ans. Well, I met Dr. Cook on the street; it has been some five or six days ago. We had some conversation in regard to the autopsy, and one time I stopped in his office as I was passing to see at what time I should appear here, as I was busy.

8. Did he tell you his recollection of the condition of the stomach, kidneys, or liver of Harvison, or that, in his opinion, intemperance affects those organs perceptibly, or anything on that subject? If so, state all you remember he said about those matters.

Ans. I don't recollect; we had a general conversation in regard to the autopsy.

9. Did he not tell you or say that the liver, stomach, and kidneys were in a normal condition or anything of that kind?

177 Ans. I don't remember that he did at that time; it was spoken of at the autopsy by all the physicians present as well as I can remember, Dr. Blackburn particularly.

10. Did he ask you at this late interview what you recollected or could testify to as to the autopsy?

Ans. He simply asked me if I remembered the autopsy; did not ask me anything about testifying.

11. Were you subpœnaed as a witness here?

Ans. No, sir; I was not.

12. Did you not come to testify at Dr. Cook's request?

Ans. I was asked by Dr. Cook if I would give the result of that autopsy.

Redirect examination:

Redi. 1. In the autopsy of Mr. Harvison did you or not make sufficient examination of the stomach, liver, and kidneys to satisfy yourself that they were healthy and in a normal condition?

Ans. Yes, sir; that was the conclusion arrived at by myself and all the physicians present.

H. C. MILLER.

178 *Deposition [of] Dr. Cary B. Blackburn.*

Dr. CARY B. BLACKBURN, being duly sworn, testified:

Int. 1. What is your profession, and how long have you been engaged in the practice of it?

Ans. I graduated in 1861, but did not commence the practice of medicine until 1864.

2. State whether or not you attended, professionally, Wm. G. Harvison during his last sickness; if so, state where you attended him, and how long.

Ans. Yes, sir; he came to see me at my office on March 4th, 1880, and I doctored him up till the time of his death, on August, 25th, 1880.

3. For what disease or diseases did you treat him, and of what did he die?

Ans. I first treated him for dyspepsia, and I thought he had liver trouble, and I treated him for that. I think his lungs was the cause of his death—aepatization of his lungs—a heart clot was the immediate cause.

4. State whether or not you attended the autopsy on his remains and took part therein on the 26th day of August, 1880; if
179 so, state who was present at the autopsy and took part therein.

Ans. Yes, sir; I was there. Dr. Ronald, Dr. A. B. Cook, Dr. H. C. Miller, and Dr. Frazee, and myself.

5. From the autopsy what was developed as to the condition of Mr. Harvison's internal organs and the cause of his death?

Ans. We found effusion of cerum in the left pleural cavity and pleuritic adhesion to the right pleura and complete hepatization of the right lung, and the upper lobe of the left lung was also hepatized. We found the stomach, liver, and kidneys, and intestines in a perfectly healthy condition as far as I could judge, and we examined them pretty close. We found about half a gallon of bloody cerum in the left pleura. We found a large fibrinous clot in the bicuspid valve of the heart about two inches and a half long and somewhat organized, and it projected into the pulmonary artery, stopping up the artery, which caused the immediate death.

6. State whether or not you made notes at the time and
180 whether before making the foregoing answer you referred to such notes to refresh your memory as to facts.

Ans. Yes, sir; made at the time of the post-mortem. I have referred to such notes.

7. State what examination you then made of the stomach, liver, and kidneys.

Ans. Well, they were examined very closely, especially by me, as I thought there *was* the cause of death—all those organs—the stomach, liver, and kidneys; I cut the liver open, sliced it, and made as close an examination as possible. I examined the stomach and kidneys in the same way; they were taken out and laid on a box and examined.

8. Where the habit of drinking spirit-ous liquors conduces to cause or causes disease what internal organs are attacked and suffer from such cause?

Ans. The liver, in my opinion—the liver and kidneys, but the liver most.

9. From the condition of his liver and kidneys as devel-
181 oped by the autopsy, and from your medical experience, was or not the disease of which Mr. Harvison died caused directly or indirectly, proximately or remotely, by a habit of drinking spirituous liquors?

Ans. No; not in my opinion, sir.

10. State whether or not Dr. Goodale and Mr. Wm. W. Morris at any time before the death of Mr. Wm. G. Harvison, and how long before as near as you can remember, called upon you to make inquiry as to his condition and the probability of his living or dying with his then sickness, and state as near as you can what conversation passed between you and them on that subject.

Ans. Well, one Sunday—it could not have been very long before Harvison's death—Col. Morris came into my office with a gentleman and introduced him as Dr. Goodale to me, and asked the condition of Mr. Harvison and what I thought of his chances of living, &c., and I told him he could not live but a short time; that was about all that was said.

11. State whether or not at that interview the gentleman
182 introduced to you as Dr. Goodale and the Dr. Goodale you meet here is the same person.

Ans. I think it is.

12. State what, if anything, Dr. Goodale said about a policy on the life of Wm. G. Harvison.

Ans. Well, in the conversation they gave me to understand that Dr. Cook had a policy on his life, and there was some trouble about it, and they wanted to get it before Harvison's death. They asked me then how long he would probably live, and I told them not long; if they wanted to get it they had better hurry up, and they went out and said they were going up to see Mr. Harvison at the infirmary.

Cross-examination:

X Int. 1. How long was that interview before the death of Mr. Harvison; was it as much as a month or six weeks?

Ans. I think not, sir, as near as I can recollect.

X Int. 2. Could you be sure it was not as much as two months?

183 Ans. No; I don't think it was two months, but I can't be sure. It was while he was at the infirmary, and I don't think he was there two months. It was long about the 18th of July. No, I take that back.

3. What was the matter with Harvison that you expected him to die so soon, at the time of this interview; how soon did you expect him to die, and was it as soon as you expected?

Ans. I found that when he got to the infirmary that he fell away a great deal. He had some congestion and adhesion of the lung, and great trouble in breathing, and great trouble with his stomach; took no nourishment; also dropsy of the lower extremities. I looked for him to die at any time. I would not have been surprised had he died at any moment. He died as soon as I expected he would. He lived longer than I expected he would.

4. What was the reason that you thought his liver was affected before the autopsy?

184 Ans. From the dropsy of the lower extremities and the condition of the stomach.

5. Did not your knowledge of his habits in regard to the use of spirit-ous liquors also cause you to expect to find that the liver was affected?

Ans. To my knowledge, I never saw the old fellow drink in my life, except a little ammonia and whiskey I gave him. I had heard that he drank.

6. Did you tell Dr. Cook of the interview you have testified you had with Goodale and Morris, and how soon after the interview?

Ans. I told him the other day, I believe. I told him they were at my office. I never told him what transpired or what they said. I don't remember that I ever told him before that.

7. Dr. Cook was attending Harvison at the same time, was he not, and knew his condition?

Ans. No; not that I know of; he may have visited him. Dr. Frazee and I were attending him. I don't know whether Dr. Cook saw him with me after he went to the infirmary.

185 8. Then Dr. Cook did not hold any consultations with you at the infirmary?

Ans. No, sir; I was employed and paid by the family.

9. Who came with Dr. Cook to see you recently when you told him about the interview?

Ans. Nobody came. I went for Cook to go up town with me to see a patient of mine. I thought I had to come here to give my deposition, and finding I did not have to I went to Dr. Cook's office and he went up with me, and I told him in the buggy.

10. What day was that, Doctor?

Ans. I think it was last Wednesday, sir, as near as I can come to it.

11. Were you sick that day, Doctor?

Ans. No; I had been sick before that. I was not very well.

CARY B. BLACKBURN.

Deposition [of] Miss Mamie Roberts.

Miss MAMIE ROBERTS, being duly sworn, testified:

Int. 1. State your name, age, residence, and whether you are
186 the daughter of the complainant, Mrs. Fannie M. Cook.

Ans. Mamie M. Roberts; seventeen May 2nd, 1882; Louisville, Kentucky. Yes, sir; I am the daughter of complainant, Fannie M. Cook.

2. State whether or not you know Dr. Goodale, the gentleman now present, how long you have known him, and where you first became acquainted with him.

Ans. Yes, sir; I do know Dr. Goodale. I met Dr. Goodale a year ago last June. I met him in papa's office, and was introduced to him by papa.

3. Who do you mean by papa?

Ans. Dr. A. B. Cook, my step-father.

4. Who was present besides Dr. Goodale, Dr. Cook, and yourself?

Ans. No one else; there were four of us—mama, Dr. Cook, Dr. Goodale, and myself.

5. How do you fix the time—you say you met him in June, 1880?

Ans. I know it was a year ago last June, because we had just returned from New York the day before Dr. Goodale came.

187 6. If there was any conversation at that time between Dr. Goodale, Dr. Cook, and your mama about the policy on Mr. Wm. G. Harvison's life you will please state what each of them said, as nearly as you remember it.

Ans. Dr. Goodale told mama that he had called to see papa about the policy on Mr. Harvison's life. He told mama that papa would have to give up the policy, because Mr. Harvison was drinking and the company would not carry it any longer. Mama told Dr. Goodale that Mr. Harvison was not drinking at all; that he was ill from other disease, and the company had said nothing about settling the policy until they found that Mr. Harvison was about to die. Mama told Dr. Goodale that papa had taken the policy out for her and had assigned it to her, and she would not make any compromise whatever; that the policy was taken out to be paid at Mr. Harvison's death, and she would certainly never give it up until then, when she could collect the full amount of the policy—at Mr. Har-
188 vison's death. That is all I remember about that conversation. Dr. Goodale did not stay very long after that conversation; that was the first one.

7. Did you after that hear another conversation between Dr. Goodale and your mother and Dr. Cook upon the same subject—that is, the subject of the policy? If so, state when and where, and who was

present, and state as nearly as you can remember what each of them said at that interview about the policy.

Ans. Yes, sir; I heard another conversation about the policy on the following Monday at papa's office. Mama and papa and I were in the office and Dr. Goodale came in. Dr. Goodale told papa that he had come to get the policy and that if he did not give it up that evening he would enter suit at once. Mama told Dr. Goodale that papa was sick and was in no condition to transact business; that the policy belonged to her and not to papa and was taken out for her and been assigned to her. She forbade him taking it and
189 told him if he took it he took it with his eyes open and at his own risk; that she would make the company — her the full amount at Mr. Harvison's death. Dr. Goodale told mama that if she could not trust papa to attend to business that she had better get a divorce from him; that he might awake some night and kill her, and that she had better go over and consult with her friend, Col. Mundy, who was insane upon the subject of life policies. Dr. Goodale still insisted upon papa giving up the policy, offering $2,500. Papa told Dr. Goodale that he could not sell; the policy belonged to mama and she would not consent to give it up. Dr. Goodale then told papa that he would give him $3,000 for the policy. Papa still refused. Dr. Goodale then became very much excited and showed a good deal of temper and said he would give papa $4,000; that he must have the policy, and if papa did not accept his offer that evening that he would bring suit at once and compel him to give it up, and then he would get nothing. Mama still protested all the
190 time and said she would never give up that policy, and that she did not intend to be cheated out of it. Dr. Goodale then became more excited than ever, and asked papa if mama's name appeared on the policy. Mama replied that she had told Dr. Goodale why her name did not appear on the policy, because Mr. Wm. W. Morris said that papa would have to assign it to mama on a separate paper, which he had done.

8. Did they exhibit the policy of which they were speaking before you at that time?

Ans. No, sir; they did not; I did not see it at all.

9. Was the policy surrendered or assigned to Dr. Goodale while you were present? If so, state by whom.

Ans. No, sir; I left the room before Dr. Goodale got it.

10. Do you know whether he got the policy that day. If so, state how you know that fact.

Ans. Yes, sir; I know he got it that day, for in a short time after I went upstairs mama came up very much excited and said she wanted me to go over to see Col. Mundy with her at once.
191 Dr. Goodale had taken her policy after her protesting against it all the time. I went with mama at once to see Col. Mundy. I remember now what it was Dr. Goodale said when I left off. He got very angry at mama because she said she would never give up the policy until Mr. Harvison's death, and said he did not want to hear anything more about the policy belonging to

mama, and he did not care for her claim; that all he wanted was the policy and that he must have.

11. Have you now stated all you remember of that conversation?

Ans. Yes, sir; I have stated all that I can remember.

12. State whether or not you were present in Dr. Cook's office some time before you met Dr. Goodale there, and when you met Judge Edwards and Mr. Wm. W. Morris in his office. State what occurred and was said and who was present at that time, if you remember such an occasion.

Ans. Yes, sir; I was in papa's office at the time Mr. Morris
192 and Judge Edwards came in. I think it was in February. I know it was in the winter time. When Mr. Morris came in he told papa that he would like to see him privately, looking at me as much as to order me out. Of course I got up and went out, feeling very much hurt at the time. I met mama coming down the steps as I came out of papa's office. I told her the way Mr. Morris looked at me and what he said to papa. She said that I should not be ordered out of papa's office; took me by the hand; said I should go back in the office with her. When mama and I went in we found Mr. Morris in a dispute with papa about the policy. Mr. Morris insisted that papa had promised to make the compromise, and papa insisted that he had not promised to make the compromise. Mama told Mr. Morris that she did not intend he should annoy papa any longer about the policy; that he knew it was her policy and had been assigned to her by his dictation and she did not intend
193 to make any compromise at any price. Mr. Morris said yes, he knew it was mama's policy, but that she had better accept the company's offer than not to get anything, for the company would not carry it any longer. Mr. Morris and Judge Edwards then left.

13. Have you stated all you remember of that conversation?

Ans. Yes, sir; I have—all that I can remember.

14. Was that before or after the time you heard the conversation between your mama and Dr. Goodale in the office?

Ans. Yes, sir; it was about five months before I heard the conversation between mama and Dr. Goodale.

Cross-examination:

X Int. 1. At the close of your answer to question 7, when you had said, "Mr. Morris said papa would have to assign it to mama on a separate paper, which he had done," did you not forget for a moment the thread of what you were saying, and add, "Mr. Kinkhead,
194 let me see—where did I stop off at?" or something like that, and then at the end of your answer to question 10 remember the matter as you wished to state it and finish it there?

Ans. No, sir; I did not forget anything except what Dr. Goodale said just before I left the room. I don't forget such matters as this; I remember this.

Here questions 7 and 10 and the answers were read to the witness and she said:

I don't remember that I said those words. I said something to that effect, for I then remembered what he said. He said that just as I was leaving the room. The only reason I said what I did was because I wanted to finish the conversation.

X 2. Why did you leave the room before the interview with Dr. Goodale was finished, at the time of the assignment of the policy?

Ans. Because mama was very much excited and Dr. Goodale showed a good deal of temper towards mama, and I was tired
195 of hearing about the policy.

X 3. What did Dr. Goodale mean by advising your mother to see her friend, Col. Mundy? What had Col. Mundy to do with this matter at that time?

Ans. I don't know what he meant. I suppose he said it because he was angry with mama and because he knew Col. Mundy had always been mama's lawyer. Col. Mundy had not anything to do with it at that time.

X 4. How old were you when Judge Edwards and Mr. Morris had the interview with Dr. Cook which you have testified about?

Ans. I was in my sixteenth year.

MAMIE M. ROBERTS.

Second Deposition [of] Miss Mamie M. Roberts.

Second deposition of Miss MAMIE M. ROBERTS, who, being duly sworn, testified in rebuttal:

Int. 1. State whether or not you were present at a conversation between your mother and Mr. Wm. W. Morris about surrendering the policy on the life of Mr. Harvison, on an occasion at Dr. Cook's house on Jefferson street, when Mr. Morris stood in the hall
196 at the foot of the stairs and your mother at the top of the stairs, on the second floor. If so, what was said by both Mrs. Cook and Mr. Morris, and who was present?

Ans. Yes, sir; I was present at that time. Mr. Morris rang the bell and came in, and mama hollowed down to know who it was. Mr. Morris said it was he; he asked mama if papa was in, and she said no he was not; he wanted to know what time papa would be back; mama replied that she did not know what time he would be back, and asked him if he had come to see papa about that policy; he said he had, and mama said if that was what he wanted to see papa about he need not wait to see him; that he knew that policy was hers and had been assigned to her; he said yes he knew that; he said that if she did not let papa give up the policy the company would cancel it, and said she had better take a half-loaf than
197 nothing, and that if the company cancelled it she would never get anything; that was all the conversation about the policy; my aunt, mama, and I were present.

Cross-examination:

Cross 1. Did you come into the hall before your mother?

Ans. I went into the hall with my mother.

X. 2. Why did you go into the hall?

Ans. Because my aunt had said some one had rang the bell, and mama and I went to see who it was.

X. 3. Were you, your mother, and aunt in the room where Johnnie was when the bell rang?

Ans. No, sir; we were not: my aunt was in the hall and mama and I were in mama's room.

X. 4. Did you know, when you went into the hall, who had rung the bell?

Ans. No, sir; I did not.

X. 5. Why did you go along with your mother to answer the bell?

Ans. Because the bell rang so hard that I went with mama to see who it was; I thought it very strange that the bell should ring so hard.

X. 6. Who was your mother's lawyer?

198 Ans. Col. Mundy had always been mama's lawyer. No one was mama's lawyer at that time, because she had no business to have a lawyer.

X 7. After you had answered the last question did not Mrs. Cook and Mrs. Hickman both make some remark on the subject of a lawyer in response to a remark you were about to make?

Ans. Not that I remember. If they did I did not notice it.

X 8. When did the conversation you have stated take place?

Ans. In February, 1880.

X 9. How do you know it did?

Ans. Because my little cousin was sick then. Mr. Morris called at the time he was confined to his bed, sick with the measles.

X 10. What enables you to remember your cousin was sick in Feb'y?

Ans. I don't know what enables me to remember it. I am positive it was about two months after Christmas. My aunt had not been back from Missouri long.

X 11. Did you not accompany your mother to Col. Mundy's

199 office in the winter or spring of 1880?

Ans. Not that I remember of.

X 12. Are you certain that you did not during the month of Feb., March, April, or May of the year Johnnie was sick?

Ans. No, sir; I don't think I was. The only time I was there was the same day the policy was taken.

MAMIE M. ROBERTS.

Deposition [of] Mrs. L. L. Hickman.

Mrs. L. L. Hickman, being duly sworn, testified:

Int. 1. State your name, age, and residence.

Ans. I am in my 32nd year, and live in Todd county, Ky.; my name is Mrs. L. L. Hickman.

2. Where were you in the month of February, 1880?

Ans. I was at Dr. Cook's office, in Louisville, on Jefferson St. between 4th and 5th.

3. State whether or not while at Dr. Cook's house during that

month you heard a conversation between the complainant, Mrs. Cook, and Wm. W. Morris concerning the surrender of a
200 policy on the life of Wm. G. Harvison, on an occasion when Wm. W. Morris was at the foot of the stairs and Mrs. Cook was at the head of the stairs, on the second floor; and, if so, state what was said by both of them on that occasion and any circumstance that fixes the occasion on your mind.

Ans. Yes. Mr. Morris came into Dr. Cook's and hollowed up to Mrs. Cook to know where Dr. Cook was. She then wanted to know what he wanted to see the Doctor about. He told her he wanted to see Dr. Cook about giving up the policy. She told him she did not think it would be worth while for him to see the Doctor, as she did not intend he should give it up; that it belonged to her and had been assigned to her, and he knew it. He said yes he knew that, but that she had better take [a] half-loaf than nothing; that the company would cancel the policy and she would get nothing; that was all about the policy. My little boy was quite ill with measles
201 and pneumonia. Mr. Morris said he could sympathize with us; he had had sickness in his own family.

4. Where were you when that conversation took place, and who else was present with you?

Ans. I was in the hall at the top of the steps and Mama Roberts was present.

5. State whether or not you could from where you stood during the conversation see Mr. Morris or could he see you?

Ans. I saw Mr. Morris from the top of the steps. I don't know whether Mr. Morris saw me or not.

6. How far were you and Miss Mamie Roberts from Mrs. Cook during that conversation?

Ans. Standing close by her.

7. State if anything was said by Mrs. Cook and Mr. Morris during the conversation about the health of Mr. Harvison, and, if so, what.

Ans. Yes; Mrs. Cook asked Mr. Morris if he knew Mr. Harvison was dead. He said no, but that he had heard he had been quite ill.

202 Cross-examination:

X Int. 1. Your relationship to Mrs. Cook?

Ans. I am her sister.

X 2. You were on a visit to her at the time?

Ans. Yes, sir; I was.

X 3. How long had you been on that visit when the conversation you speak of took place?

Ans. I had been to Dr. Cook's about three weeks.

X 4. Was your son very ill at the time of the conversation?

Ans. Yes; he was quite ill with pneumonia.

X 5. Who was left in the room with him when you and Miss Mamie were in the hall?

Ans. No one at all; he was asleep.

X 6. Why did you and Miss Mamie go into the hall?

Ans. I had been nursing my little boy and was tired sitting, and got up for a little exercise and walked out into the hall.

X 7. Had you got into the hall before or after the conversation commenced?

203 Ans. I was in the hall when the bell rang and Mr. Morris stepped in.

X 8. Who was there first, you or Mrs. Cook?

Ans. I was there first.

X 9. Did you during your said visit take your meals with Dr. Cook and family?

Ans. Yes, sir; I did.

X 10. Where?

Ans. At Dr. Cook's residence.

X 11. Did your visit cover the whole of the month of February?

Ans. Yes, sir.

X 12. Are you certain you took your meals at Dr. Cook's residence?

Ans. I am sure I did.

X 13. With whom have you conversed or told what your testimony would be?

Ans. I have conversed with Dr. Cook and Col. Mundy.

X 14. Did you come to Louisville this time to give testimony in this case?

Ans. Yes, sir.

X 15. What lawyer was advising Mrs. Cook about her business about that time?

204 Ans. I did not know Mrs. Cook's lawyer; I didn't know anything about her business.

X 16. What enables you to fix Feb., '80, as the time?

Ans. Because I came from Missouri some time in January.

X 17. How many days after New Year's day?

Ans. I can't tell exactly how many days after New Year's day. It was some time in January.

X 18. In the early, middle, or latter part of Jan'y?

Ans. It was some time between the early part and the middle.

X 19. What time did you leave after that visit to Mrs. Cook?

Ans. I left some time in March—about the last of March.

X 20. What time in February—first, middle, or latter part—did the conversation occur?

Ans. Little Johnnie had been sick about three weeks. I could not tell exactly what time, but it was some time in February.

X 21. When was Johnnie taken sick?

205 Ans. He was taken sick along about the last of January.

X 22. Who told you what Morris had said on the subject of this conversation in his deposition?

Ans. My sister wrote to me about it.

X 23. Who told you the conversation took place in Feb'y?

Ans. I knew it was February my little boy was sick.

X 24. Wasn't your boy sick in Jan'y?

Ans. He was taken sick towards the last of January.

X 25. What enables you to remember you and Miss Mamie went out in the hall in Feb'y?

Ans. I remember my little boy was sick and I heard the conversation. My own memory enables me to remember.

X 26. Can you locate the time more definitely than you have given?

Ans. It was between the middle and the last of February. Little Johnnie had been sick about three weeks, and he was taken sick about the last of January.

L. L. HICKMAN.

The depositions read on behalf of the defendant are as follows:

206 *Deposition [of] Dr. A. W. Goodale.*

Dr A. W. GOODALE, being sworn, testified:

By Mr. WILLSON, of counsel for the defendant, The Phœnix Mutual Life Insurance Company:

Int. 1. State you name, age, residence, and occupation, and how long you have been engaged in such occupation.

Ans. Addison W. Goodale; 50 years; Hartford, Connecticut. I am special agent of the Phœnix Mutual Life Insurance Company of Hartford, Conn. I have been engaged in that occupation 14 years.

2. Are you acquainted with Dr. A. B. Cook, the beneficiary in the policy in controversy in this action, No. 66488, issued by the Phœnix Mutual Life Insurance Co. of Hartford, Conn., on the life of Wm. G. Harvison, and with the complainant, Mrs. Fannie M. Cook, and her daughter, Miss Mamie M. Roberts, who has testified in this action?

207 Ans. I am acquainted with Dr. A. B. Cook. I met a lady who was introduced to me as Mrs. Cook, and there was a little girl in the room. I don't know who it was. I have no recollection of being introduced to her.

3rd. Do you recognize complainant, Mrs. Cook, who is present now, as the lady introduced to you as Mrs. Dr. A. B. Cook?

Ans. Yes, sir.

4th. Do you recognize Miss Roberts, who is now present, as the little girl spoke of?

Ans. I think she is the same girl. She is larger now.

5th. State how you came to be acquainted with said parties, and the occasion of your first interview with any of them, when it was, where, and who were present, and if the interview was in reference to the said policy. State the object of the interview, and what was said, and by whom.

208 Ans Some time in November, 1879, I came to the State of Kentucky for the purpose of examining the risks of the company in regard to their habits, and among the Louisville risks I found I had a copy of an application for insurance on the life of Wm. G. Harvison in favor of Dr. A. B. Cook. I looked in the directory for Wm. G. Harvison and could not find him. I then went to Dr. A. B. Cook, the beneficiary. I had previously called on Mr. Morris,

and he had told me that he was negotiating with Dr. Cook about reducing it to $10,000.00. I then called on Dr. Cook at his office and asked him if he could tell me where Harvison was; that I had learned from a letter or a note accompanying the application that the company had been trying to get Harvison reinsured in another company for half the amount of the original insurance, and that Mr. Morris had told me he had been unable to find him. I asked Dr. Cook if he could tell me where he was. He said he could not; the last he had heard of him he was in Pennsylvania & Ohio. I asked Dr. Cook if he had a wife—perhaps she might know
209 where he was. He said he had a wife, but she had gotten a divorce from him. I asked him if he knew anything about his health. He said his health, when he had been heard from, had been good, with one exception—he had had pneumonia since he left here. I then asked him about his wanting the policy reduced from $20,000.00 to $10,000.00. He said he would like to have it so reduced, provided he could get up his premium notes which the company held. Dr. Cook then told me that Mrs. Harvison was his sister and where she lived. That ended the interview at that time, as far as I remember now. Mr. Morris, Dr. Cook and myself were all that were present.

6th. State whether anything was said at that interview as to the cause of divorce. If so, what was said?

Ans. I asked Dr. Cook what the cause of divorce was. He said he did not know; he believed it was from some ill treatment.

7th. When and where was the next interview that you had
210 in regard to that policy with any of the parties named, Dr. Cook, or his wife, or daughter, and state what you had done between the interviews in the investigation of the matter, in so far as you stated it to the person or persons with whom such next interview was had. State who were present at such interview and what was said.

Ans. It was in the early part of December, 1879, I returned from Louisville from an inspecting tour through the State and found the original application had been forwarded to me from the home office, which I took to Dr. Cook's office, and this was the next interview. I then and there told Dr. Cook that I had been to see Mrs. Wm. G. Harvison, divorced, and that I had asked her what was the cause of her applying for a divorce and upon what grounds she had obtained one. I told Dr. Cook that she told me that it was on the ground of intemperate habits and abuse to herself and children. I told him that she had told me that he was an habitual drunkard in 1872, and before that time he was in the habit of often becoming intoxicated, and that he grew worse and worse until 1877, when she had
211 sued for and obtained a divorce, and that she told me in what court she had obtained it; that I had been to the court and taken a copy of the depositions given in evidence, and that the witnesses had all sworn that he was a man of intemperate habits. I showed Dr. Cook the copy of the depositions I had taken from the chancery court, one of which was that of Harvison's son, his daughter, and Dr. Geo. Cook. I think it was Dr. Geo. Cook. Dr. Cook replied

that he knew Harvison drank a good deal, but he thought those affidavits exaggerated his condition; and he said no one knew Harvison's habits better than our agent, Mr. W. W. Morris; that he had paid his money in good faith, and that he thought it was unfair for us to make any exceptions to taking the premiums and continuing the policy. I told Dr. Cook that if those affidavits were true I did not think the company would be willing to continue the policy in force or accept any more premiums. I told Dr. Cook that the information we had received from Mrs. Harvison was the very first information that
212 we ever had that Wm. G. Harvison was a man habituated to the use of intoxicating liquors. I told him that we could not under the circumstances accept of any more premiums if it be true that he was a man of intemperate habits, but that I would give him for the surrender of the policy to the company $1,500.00. I think the exact amount the company authorized me to pay was $1,494.00. He said he thought we ought to pay more. He said he had paid his money in good faith, and he thought the company ought to return to him the premiums which they had received from him. I told him we could hardly do that after carrying the insurance for about 8 years. We had a very pleasant interview, but we could not think alike as to the amount he should accept of, and I left. I had the amount given me which I should give for the policy, and I had no right to exceed my authority. Dr. Cook told me as I was about to leave that he would call and see me before I left the city
213 with his attorney. I had no recollection of any one being present excepting the Doctor and myself. Mr. Morris might have been present; other persons may have been present; but I have no recollection of them.

8th. How did it happen the company had authorized you to make the offer stated?

Ans. I had written to them after having the interview with Mrs. Harvison as to his habits and asked them if they did not think I had better see Dr. Cook and try & settle the matter with him, and asked them how much they would be willing to give him. I don't remember exactly what I wrote them, but it was in answer to my letter.

Complainant asks to have the correspondence to which the witness referred produced and made a part of his deposition.

9th. When was the next interview about that policy; where; who were present? State what was said.

Ans. It was either that afternoon or the next day, about De-
214 cember 4th, 1879, at the Galt House. Dr. A. B. Cook, his attorney, Judge Edwards, W. W. Morris, and myself were present; Dr. Cook said he had brought his attorney up to talk to me about that policy on Harvison's life; I stated to Judge Edwards about the same I had told Dr. Cook at the previous interview, and told Judge Edwards I was willing to give him $1,500.00 for the surrender of the policy, in cash, and the return of a large amount of notes that we held against the policy—I don't remember the exact amount. We had a good deal of talk about Harvison's habits and about a notice

that had appeared in the papers at the time Mrs. Harvison had obtained her divorce. Judge Edwards told me that he had advised Dr. Cook that he could collect from the company the amount of premiums they had received from him since that notice came and — in the papers that she had obtained a divorce, and the grounds for obtaining it was intemperate habits. Mr. Morris then told
215 Judge Edwards that he did not at that time have any notice of his habits, but Judge Edwards insisted that it was a public notice and the company might have known it; that he should advise Dr. Cook to take $3,000.00 in settlement of the policy & surrender it to the company. I told him it would be of no use for Dr. Cook to make that offer; that I could not exceed my instructions; that is all I remember at that interview.

10th. When was the next interview you had with Dr. Cook or his wife about said policy; who was present, where, and what was said?

Ans. It was about the middle of January, 1880, at Dr. Cook's office; I think Mr. W. W. Morris was; I don't remember that any one else was present besides Dr. Cook and myself. I told Dr. Cook that I was in the city on business; that I had called to say to him that I had gotten a more favorable offer for him from the company, and I hoped that we might arrive at a satisfactory adjustment of
216 the matter for both parties; I told him that I was authorized by the company to give him $2,000.00 in cash and return the premium notes. He said that he would not accept of that amount, but that if I would give him $3,000.00 in money and return the notes he would surrender the policy to the company and be satisfied. I again told Dr. Cook that I had no authority to give him anything beyond what I had been instructed, and he told me he would go and see Judge Edwards, his attorney, and wanted me to call again. I called again, either that day or the next, at his office, and he told me that he should not be satisfied to take less than $3,000.00, but would take that. That was all that I recollect of at that interview. There was some of the same old conversation over in regard to his habits and that Morris knew it, and I said to him that Mr. Morris positively denied knowing anything of his intemperate habits or using liquor in any way. I said to him that
217 Mr. Morris was a gentleman upon whose word we placed great reliance; that he had been our agent for a great many years, and we had never known him to tell a falsehood, and that I believed if he knew that Harvison was an intemperate man or in the habit of using intoxicating drinks he would say so. I don't remember anything else now. I don't think any one was present this last time excepting Dr. Cook and myself. It is possible that Mrs. Cook might have been at that interview; I can't be positive; I would not say she was not.

11th. When was the next interview about the said policy with Dr. Cook or his wife; where was it, who was present, & what was said?

Ans. In June, 1880, at Dr. Cook's office. I was here on other business, and I called in at Dr. Cook's office, and he was alone. I asked

him how he felt about the Harvison policy—if he felt like taking anything less than $3,000.00. He said no; he would not take
218 that now, for Harvison was sick here in the hospital; said he would not want to take less than $5,300.00 in cash for it; said he would take $5,300.00 for it and surrender the policy to the company. I offered to give him $3,000.00. We had considerable talk about the habits of Harvison—about the probability of his being able to collect the policy after Harvison's death—and he finally said, although he ought to have all the money he had paid in, he would take $4,000.00 if I would give it. I said to him that I was not willing to give $4,000.00 that day, but I would give $3,000.00. This was on Saturday. I asked him if he was willing to leave his offer of $4,000.00 and mine of $3,000.00 open until Monday, at ten o'clock. He said he was. I said he might be willing to take less and — might be willing to give more, but I would leave my offer of $3,000.00 if he would his of $4,000.00. He said if I concluded to pay $4,000.00 on Monday he would accept of that amount. I asked him if he had seen Harvison—he visited him at the hospital every few days
219 —and he said he was considerably sick. I don't remember anything more.

12th. State whether or not you next had an interview with Dr. C. B. Blackburn, what day it was, and what was said.

Ans. I did, the next day, Sunday. Mr. Morris and I called on Dr. Blackburn. I asked the Doctor if he was attending Harvison. He said he was. I asked him what was the matter with him. He said he had some gastric trouble or difficulty with his stomach, and with his liver and his heart. I did not learn from Dr. Blackburn that he was in any danger of dying, but from what he said I was led to believe he would recover from the present sickness. I don't think he told me in so many words that he would recover, and I left with the impression that he did not have a very clear idea of his case, and what he said in regard to Harvison's condition had very little weight with me in making up my mind in regard to his condition.

220 13th. When and where was the next interview you had with Dr. or Mrs. Cook, who was present, and what was said?

Ans. Monday, the 14th of June, 1880, I called at Dr. Cook's office at ten o'clock, as per agreement with Dr. Cook. The Doctor was not there; I left my name on his slate and called again about eleven. I think I met Mrs. Cook and her daughter there, and she said she thought the Doctor would be back soon, and asked me if I had called to see him in regard to his policy on Harvison's life. I told her I had, and she said she thought it was a shame for the company to refuse to continue the policy; that Morris knew about his habits, and I told her I would call again at one o'clock that afternoon. I did call again and met Dr. Cook and his wife and a little girl who was with her. I don't remember whether Mrs. Cook was in the office when I first went in; I think she was not upon reflection, but she soon came in. I told Dr. Cook that I had called to see if he had made up his mind to take less than $4,000.00. He said
221 he had not; that he had decided not to take less than $5,300; that he had heard from Harvison and he did not think he

was going to live long, and my best recollection is that he told me that he had been over to see Harvison the day before. I asked him if that was the kind of a man he was, to go back on his word; that I had come prepared to accept of his offer of Saturday, and would give him $4,000 for a surrender of the policy. Mrs. Cook was present and told the Doctor that she would not, if she was in his place, take $4,000.00; and she then turned to me and said that she thought if the Doctor kept this policy until Harvison died he could sue the company and recover every cent of it. I again asked the Doctor if he still insisted on going back on his offer of Saturday, and he said, owing to Harvison's condition, he thought he ought to have more. Mrs. Cook again told the Doctor that she thought he had better not sell it for that amount; that she thought he could recover the full amount of the policy
222 by waiting until Harvison's death. I then said, "Madam, I believe, if I am not mistaken, that Dr. Cook is the beneficiary named in this policy, and is the owner of the policy, and has a right to dispose of it." I thereupon drew the application out of my pocket and I said, "Yes, Dr. Cook must be named in the policy as beneficiary; it so appears in the application." Mrs. Cook then said, "Yes, Dr. Cook owns the policy, but he has always told me when Harvison dies he would give me some of the money coming from that policy." She again said she thought the Doctor would get more money to wait until Harvison's death. I again said, "Well, Doctor, what are you going to do? I think it is high time that this conversation was closed; we have had several talks about it." Dr. Cook reached up in his desk and took the policy down and said, "I will accept of the $4,000.00, as I agreed." He handed the policy to me and said, "Write your receipt upon it," which I did, and he signed it, and I gave him a draft on the company for $4,000.00,
223 and agreed to return him the premium notes, and I got up to leave the office, and Mrs. Cook said to me that I had made a good bargain out of the Doctor, and that I was a good talker. I said to her that I could return the compliment; that I thought she was a good talker, and if she should ever want a recommendation to that effect I would give her one. The interview terminated very pleasantly, and I left believing both Dr. & Mrs. Cook to be satisfied with the settlement. I knew that Dr. Cook wanted more, and she thought he ought to get more, but when Dr. Cook decided to take $4,000.00 I had no idea but they were both satisfied with it.

14th. Did Dr. Cook hand you the policy after he signed the writing on it?

Ans. He did.

15th. Examine the policy filed with the defendant's answer in this action as Exhibit P P P, being No. 66488, on the life of Wm. G. Harvison for $20,000.00, in favor of A. B. Cook, and state when
224 you first saw it; whether or not it is the policy referred to in your last answer; who wrote the transfer dated June 14th, 1880, endorsed on it; who signed the name of A. B. Cook to it, and what was done with it after that name was signed to it.

Ans. I first saw it June 14th, 1880; that is the first I recollect see-

ing it. It is the policy referred to in my last answer. I wrote the transfer endorsed on the back June 14th, 1880; Dr. A. B. Cook signed it, the beneficiary named in the policy. I sent it to the Phœnix Mutual Life Insurance Co. of Hartford after it was signed.

16th. How did you get possession of it to send to the company after it was signed?

Ans. Dr. A. B. Cook handed it to me.

17th. State when, where, & how or from whom you first got any information whatever that complainant claimed to have or to have had any right, title, or claim to or interest in the said policy.

Ans. From Col. Mundy. It was a long time after the buy-
225 ing of the policy; I can't say exactly where; I think it was at the Galt House; I think it was in January, 1881.

18th. State all the knowledge or information of any kind whatever and any intimation you had at the time of the purchase of the policy and its delivery to you, or at any time up to the time mentioned in your last answer, that complainant had or claimed to have any right or title to or interest in said policy.

Ans. I never had any knowledge, information, or intimation up to that time further than I have stated that she had any interest in the policy or claimed to have any.

19th. Examine the draft Exhibit "P P P," filed with defendant's answer, and state what you know as to who executed it and for what purpose and what was done with it.

Ans. I executed it and gave it to Dr. Cook in settlement of policy No. 66488 on the life of W. G. Harvison in the Phœnix Mutual Life Insurance Company.

226 20th. State whether or not complainant was present when Dr. Cook signed the transfer of policy to defendant and handed it to you and received from you the draft for $4,000.00.

Ans. She was present.

21. State what complainant did or said, if anything, after Dr. Cook decided to accept the $4,000.00 for the policy, to resist or oppose its being surrendered to defendant.

Ans. She said nothing and did nothing to oppose.

22nd. State whether or not there was anything said or done to indicate that Dr. Cook was overruling his wife or compelling her to obey his wishes about the surrender of a policy. State anything that occurred of that kind.

Ans. I saw nothing to indicate anything of the kind. I did not have the least intimation from Dr. Cook or Mrs. Cook that she claimed to have any right over the policy; on the other hand she told me that it was Dr. Cook's policy, but insisted that he had promised to give her some of the money derived from the
227 policy after Harvison's death, & she thought he could get more by waiting until Harvison was dead.

23d. Examine the assignment to complainant with Dr. Cook's deposition filed, marked "R. C. K.," and state all you ever said or heard of that assignment or any such assignment before Harvison's death.

Ans. I positively never heard of this assignment of the policy alluded to in this assignment before Harvison's death.

24th. Have you or not stated fully every objection or protest complainant made, so far as you know, to the sale or surrender of the policy before it was surrended to you or before Harvison's death?

Ans. I have.

25th. Have you or not stated all the interviews you had with Dr. Cook or complainant about this policy; State every way in which you harrassed or besieged him, as he has testified, for several months to give up the policy?

Ans. So far as I remember, it is quite possible there may
228 have been another interview, but I have no recollection of it. I don't know but there was another interview at the Galt House; it seems to me there was, but I can't say positively. I did not consider that I harrassed or besieged him at all. The interview between me and Dr. Cook were of a very pleasant character; nothing occurred unpleasant between us until the last interview. I charged him with insincerity in offering to take $4,000.00, and when I had concluded to accept of his offer for him to go back on it.

26th. State all you said to Dr. Cook as to the policy being void or worthless, or his losing all the money he had paid the company, or the company suing him for the surrender of the policy, and whether or not you repeated threats of suit for the surrender of the policy.

Ans. I told Dr. Cook that if I had been correctly informed about the habits of Harvison in 1872 and subsequently that I thought the company would refuse to accept of any more premiums on the policy, and that when Harvisons died I thought the com-
229 pany would be able to successfully defend paying him anything on the policy. I think I told Dr. Cook that unless we could amicably adjust the matter I should advise the company to bring suit against him to cancel the policy. I did not say this as a threat, or, to the best of my recollection, repeat it.

Int. 27. How did Dr. Cook receive this remark about suit; what did he answer? State any signs of fear or apprehension or anxiety that appeared to be produced in Dr. Cook by your announcement.

Ans. Dr. Cook seemed to be as calm and self-possessed as he does at this moment. I don't remember that he made any reply; no signs or any fear or apprehension appeared in Dr. Cook. I can't say whether the Doctor was anxious or not.

Intg. 28. State whether or not you insisted on his giving up the policy, as stated by him. State the facts fully about that.

Ans. I did not insist upon his giving up the policy. I appealed to his honor as a medical man and a gentleman, and
230 asked him if he could afford to go back on his agreement with me of Saturday.

Intg. 29. Dr. Cook has testified that he said to you that he did not want to discuss the question of the policy, and requested you never to come to his office again to talk about that.

Ans. I have no recollection of Dr. Cook saying anything of that sort. On the other hand, he seemed quite anxious to dispose of the policy. He wanted a return of all his premiums. The only differ-

ence between us was in regard to the amount he should receive. He said he was not able to carry the policy; that he had to give his note for a part of the last premium.

Intg. 30. Dr. Cook testified that he had informed you that the policy belonged to his wife and was her property, and he could not make any settlement. State the facts about that.

Ans. The facts are that he never said one word of the kind to me.

Intg. 31. Dr. Cook testified that after he had requested you not to visit him any more to discuss the question of surrendering
231 the policy you persisted in coming afterwards, urging him to give up the policy, and repeated threats of bringing suit if he did not accede to your demands. State all the facts about that.

Ans. I have stated all that I remember about it.

Intg. 32. Dr. Cook has testified that at your last visit, under your threats and demands, he finally yielded. State the facts about that.

Ans. I did not threaten him and I demanded nothing of him.

Intg. 33. State what was the general character of all these interviews in regard to the urging and the importunity, threatening, and persistency which he has testified to.

Ans. I told Dr. Cook that I was very anxious to have the policy settled before Harvison's death. In all my interviews before I knew Harvison was sick I stated that there would be a controversy over it after Harvison's death, and we had better settle it while he was living and before he had paid any more premiums. I did not consider that there was any importuning or threatening or any-
232 thing of an unpleasant character between Dr. Cook and myself or between Mrs. Cook & myself, with the exception that I was displeased with the Doctor's going back on his offer of Saturday on Monday.

Int'g 34. Dr. Cook has testified that at an interview before the last one Mrs. Cook told you she would never consent to give up the policy; that it was her property, and Mr. Morris had instructed her why it was necessary to have the assignment on a separate paper; that you requested her to consider the matter and she replied that she would never change her mind; that she was as firm as a rock. State all the facts about that.

Ans. Mrs. Cook never told me anything of the kind; I don't know but that she might have been as firm as a rock, but she never told me anything of that kind.

Intg. 35. Dr. Cook has testified that at the last interview Mrs. Cook protested violently against the surrender of the policy. State the facts about that.

233 Ans. Mrs. Cook did object to the Doctor selling his policy for that amount; I saw no violence.

Intg. 36. What was the manner and character of her objection?

Ans. That of a wife objecting to her husband making an important bargain; that he might do better by waiting; a bargain in which she had no interest further than as a wife.

Intg. 37. Dr. Cook testifies that Mrs. Cook told you that he was in no condition to transact important business; that you curtly said

that if she did not think her husband competent to transact business she had better get a divorce. State all that happened of that kind.

Ans. I recollect that Mrs. Cook told me the Doctor was in ill health and she did not think he was fit to transact business; I have no recollection of saying anything about her getting a divorce.

Intg. 38. Dr. Cook testified that complainant warned you against taking the policy; that if you did it was at your own risk; that she would hold the company responsible for the full amount
234 of the policy. State the facts about that.

Ans. She said nothing of the kind.

Intg. 39. Dr. Cook has stated that at the interview when you got the policy you excitedly asked if complainant's name appeared in the policy; that she replied that her name did not appear; that she had explained why it did not; that Morris had told her in Dr. Cook's presence that as Dr. Cook was a creditor her name could not appear. State everything of that kind that occurred.

Ans. I asked if her name appeared in the policy, and she replied that it did not, but Dr. Cook had always told her that on the death of Harvison he would give her some of the money. The rest part of the conversation was never said.

Intg. 40. Dr. Cook further stated that you tartly replied that you had heard enough of such talk and did not want to hear anything more about her claim. State the facts about that.

Ans. The facts are that I did not say any such thing.

235 Intg. 41. Dr. Cook stated that you then said you had come to get the policy and demanded that Dr. Cook should give it up or he would be sued for the surrender. State the facts about that.

[Ans.] ——.

Ans. [42]. Dr. Cook has stated that thereupon his wife warned you of the consequences; that you took it with your eyes open, and against her protest. State the facts about that.

Ans. She said nothing of the kind in my hearing.

Intg. 43. Mrs. Cook's daughter, Miss Roberts, has testified that complainant told you that Dr. Cook had taken out the policy for her and had assigned it to her, and that she would not make any compromise whatever; that she would certainly never give the policy up till Harvison's death, when she would collect the full amount of the policy. State all you remember as to any part of what I have quoted taking place and what part.

Ans. No such conversation was had in my presence or hearing.

Intg. 44. Mrs. Cook's daughter has also testified that on Mon-
236 day you told Dr. Cook that if he did not give up the policy that evening you would enter suit at once; that complainant told you that the policy belonged to her and not to Dr. Cook; that it was taken out for her, and had been assigned to her; that she forbade you taking it, and told you if you took it you took it with your eyes open and at your own risk; that she would make the company pay her the full amount at Mr. Harvison's death; that if she could not trust Dr. Cook to attend to business she had better get a divorce from him; that he might awake some night and

kill her; that Dr. Cook told you that he could not sell the policy because it belonged to complainant, and she would not consent to give it up; that you became very much excited and showed a great deal of temper; that you said you must have the policy; that if he did not accept your offer that evening you would bring suit at once and compel him to give it up, and then he would get nothing; that complainant still protested all the time, and said she would
237 never give up that policy; that she did not intend to be cheated out of it; that you then became more excited than ever; that in answer to a question by you complainant replied she had told you why her name did not appear in the policy, because Mr. W. W. Morris said Dr. Cook would have to assign it to complainant on a separate paper, which he had done. State every part of the conversation above quoted which occurred, and all about your excitement and temper.

Ans. None of the above conversation occurred—not one word of it—in my presence or hearing. I told the Doctor, as I have told before, that unless we could adjust the matter I should advise the company to bring suit for the cancellation of the policy; that part of it may be something near as stated in the question. I don't remember that I was unduly excited, or that I manifested any temper. I am not apt to get excited under such circumstances. I was in earnest in the matter *that* I had understood that Dr. Cook had made one offer to Col. Morris before and had backed out.

238 Intg. 45. Complainant's daughter has testified that you got very angry at complainant, and said you did not want to hear anything more about the policy belonging to her; that you did not care for her claim; that all you wanted was the policy, and that you must have it.

Ans. I said nothing of the kind; I did not get angry with complainant.

Intg. 46. How long had you been engaged, and what experience had you had as special agent, examining risks and investigating losses and settling and adjusting claims and controversies about life insurance contracts when you settled this matter in June, 1880?

Ans. I had been devoting my entire time to that business during the last seven years, and a part of the time for the last twelve years at that time.

Intg. 47. What was your occupation, and for how long before you became such special agent?

Ans. My occupation was that of a practicing physician & surgeon before that time, for ten years.

239 Intg. 48. What experience have you had in examining applications for life insurance as medical examiner for the company, and state whether or not you have had such experience as a physician & in the life insurance business and such opportunities for becoming familiar with life statistics as to enable you to judge of whether risks are hazardous, or what the effect is of intemperance in the use of spirituous liquors, on the risk on a life insurance, or on the probabilities of a person's living, on a person's ability to throw off disease, or on his susceptibility to disease?

Ans. I have been a medical examiner for the company for the last 16 years, but I have not examined much for them during the last 12 years; I believe I have had such experience.

Intg. 49. State what is the effect of the habitual or intemperate use of spirituous liquors on a person's life or physical condition, liability to disease, & ability to resist or throw off disease?

Ans. My experience has been that the habitual use of intoxicating liquors is very injurious; it tends to shorten life; in my
240 opinion it is very injurious to one's physicial condition—decidedly so; I think one having the above habits is more liable to disease; I think they are less able to resist or throw off disease when habituated to the use of intoxicating drinks.

Intg. 50. What is the difference, if any, between the risks of one who is temperate and not habituated to the use of spirituous liquors and one who is intemperate or so habituated?

Ans. I am unable to state.

Intg. 51. I have not asked you for percentage according to life statistics, but wish to know whether there is a difference, and if there is to have some idea about it—whether small or great.

Ans. There is, in my opinion, a difference, and a great difference, which would depend in a great measure upon the decree of the habit.

Intg. 52. State whether or not if a person who is temperate and not addicted to the use of spirituous liquors changes his habits in that regard and becomes addicted to such use or intemperate it produces any effect on the risks on his life. If yea, give us an
241 idea as to what effect.

Ans. I- makes the risk more than ordinarily hazardous and it increases the risk.

Intg. 53. How does it do that?

Ans. By producing disease and depleting the system and making the person less able to resist disease and to recover from the disease when ill.

Intg. 54. From your experience as a physician what does the bloating or dropsy in the legs indicate? From what causes does that condition arise?

Ans. It indicates an imperfect circulation of the blood.

Intg. 55. State whether or not such dropsy is ever a symptom or result of intemperance, and, if so, whether frequently or not.

Ans. Bloating of the lower extremities is often caused by disease of the liver and disease of the heart and its valves and of a disease of the kidneys, and as the above organs are more or less involved, one or all of them, in men of intemperate habits we often find dropsy.

Intg. 56. In all the conversations or interviews with Dr.
242 Cook, or complainant, in which the subject of Harvison's habitual use of, or intemperance in the use of, spirituous liquors was stated or spoken of by you, or when you stated the ground of divorce and what the depositions showed, what denial was made by Dr. Cook, or complainant, that Harvison was habituated to the use of spirituous liquors?

Ansr. They did not deny it at all. The Doctor thought it had been exaggerated. He said he knew Harvison was in the habit of getting drunk. He said Mr. Morris knew it too. He said Mr. Morris came in one night and told him he had met him on the street drunk just then.

Direct examination closed.

By consent, adjourned until this afternoon at 3½ o'clock.

Saturday afternoon, met at 3½ o'clock, as adjourned, & the cross-examination of said witness commenced.

X Intg. 1. Was not Wm. W. Morris the general agent of the defendant, The Phœnix Mutual Life Insurance Co., for the State of Kentucky at the time the policy sued on was issued and until
243 after you obtained an assignment from Dr. Cook?

Ans. I have no knowledge whether he was in 1872 or not; I believe he was; I had understood him to be a general agent longer than that; I think he was at the time I obtained the assignment from Dr. Cook.

X I. 2. Were the premium notes which you returned to Dr. Cook upon his assignment of the policy collectible against him, or merely deductible from the policy at its settlement?

Ans. I never saw those premium notes. It has been a question whether the ordinary premium note can be collected against a policy holder; it is unsettled as far as I know.

X Intg. 3. Have you ever known your company, The Phœnix Mutual Life Insurance Co., to enforce the collection from the assured of premium notes taken for premium—on what they term half-cash and half-note plan, as the notes in this case were?

Ans. There was at the time the Co. raised their interest from 6 to 7 per cent. Some of the policy holders refused to pay the
244 seven per cent.; they demanded the payment of the note. They were written one year from date. I have no knowledge of their ever enforcing the collection.

X Intg. 4. Was Miss Roberts, Mrs. Cook's daughter, in the room at the time you say Dr. Cook took the policy out of his desk and handed it to you for you to write the assignment or the receipt?

Ans. I do not know.

X Intg. 5. You say you wrote the assignment endorsed on the back of the policy sued on. Did you undertake by that writing to have Dr. Cook assign or convey or transfer any other rights in the policy than that possessed by him?

Ansr. I did not; I did not suppose anybody else had any right in it.

X Intg. 6. If you did not so intend and did not know that anybody else had any right in the policy, why did you omit from the writing the word "my" after the word "all," which would have made the assignment read "all my right?"

Ans. I know nothing about it; that is my ordinary way of writing them. I omitted nothing; that is the way I write all of them.
245 I would not say that I do not sometimes put "my" in. I did

not know until this minute that the word "my" was not in it. It was not omitted intentionally by me.

X Intg. 7. How much of the money did the complainant say Dr. Cook had promised to give her out of the policy when Harvison died? You have used the expression in your testimony "so much or some of the money."

Ans. I don't recollect that she named any amount.

X Intg. 8. How did it happen that the complainant said to you that the policy belonged to Dr. Cook?

Ans. She was interfering with the settlement between me and Dr. Cook by advising him not to settle, and I said to her, "The policy belongs to Dr. Cook, does it not," and she said it did. I thought he was able to attend to his business.

X Intg. 9. Why the necessity for her to give you that information or for you to ask that question of her when you knew his name appeared in the application as beneficiary, which you then
246 *then* had in your pocket?

Ans. There was no need of it. There was no occasion for it that I know of.

X Intg. 10. You had not been informed by some one that Dr. Cook had taken out the policy for complainant's benefit, or had assigned it to her, or that it belonged to her? Why did you ask her if her name appeared in the policy?

Ans. For the reason that I never had been in the habit of seeing women interfere with men's business, or wives with their husbands' business.

X Intg. 11. In your estimation of the value of the policy sued on at the time you were negotiating its purchase from Dr. Cook, did you base it upon the then drinking habits of Mr. Harvison?

Ans. I did not. I knew nothing about his habits then.

X Intg. 12. Did you base your estimate of its value upon information you had received that Mr. Harvison had the habit of drinking at the time the policy was issued, & which fact had been con-
247 cealed from the company and its general agent?

Ans. I never made any estimate of the value of the policy. I only made such offers to Dr. Cook as I was authorized to make by the secretary of the company.

X Intg. 13. How many offers did you make Dr. Cook before you obtained the policy, and what was the amount of each offer, commencing with the first and ending with the $4,000.00?

Ans. I made him three offers, one of $1,500.00, some time in December; one of $2,000.00 in January, 1880, and one of $3,000.00 in June, 1880. I did not make him the offer of $4,000.00. I accepted his proposition. He offered to take $4,000 and I accepted of it.

X Intg. 14. Did you receive authority from the company or the secretary to make the offers you speak of and to accept his offer of $4,000.00?

Ans. I did.

X Intg. 15. Did you receive the instructions by telegraph or letter?

Ans. To accept of the $4,000.00 I received by telegraph. The other propositions were verbal.

248 X Intg. 16. Can you produce and file the telegram as part of your deposition?

Ans. I have no objection to it, so far as I am concerned; I can't do it now; I don't know where it is.

X Intg. 17. Was Wm. W. Morris with you at Dr. Cook's office at the time you got the policy from Dr. Cook?

Ans. I have no recollection of his being there; I would not say he was not.

X Intg. 18. Do you remember at what time and where you parted from Mr. Morris that afternoon before you went to Dr. Cook's office and got the policy?

Ans. I do not.

X Intg. 19. When you had gotten the policy did you not go to see Mr. Morris and tell him you had gotten it for $4,000.00 and ask him if he did not think you had made a good bargain?

Ans. I have no recollection of it; I may have said so; I thought I had made a good bargain or I should not have made it.

X Intg. 20. At which of the interviews with Dr. Cook did you tell him you would advise the company to sue him for a cancellation of the policy?

249 Ans. I think it was the last one.

X Intg. 21. Were you at that time the legal adviser of the company?

Ans. I was not.

X Intg. 22. Had you not before that time communicated to the company all the information you had received from the divorce record and otherwise of Mr. Harvison's habits of drinking?

Ans. I had.

X Intg. 23. Was the settlement with Dr. Cook left to your discretion in any degree as to the amount that should be paid to him for the surrender of the policy?

Ans. It was not.

X Intg. 24. Who authorized Mr. Wm. W. Morris to make the offer of $2,500.00 to Dr. Cook in February, and about the acceptance of which you had heard there had been some dispute or controversy?

Ans. I do not know. I know Morris and I had several talks about it, and Morris and I both thought the company had better *to* give more than $2,000 at the time I offered $2,000.00. If it had been discretionary with me I would have taken him up at $3,000.00

250 then. In the settlement of death claims, which is my business, I use my own discretion as to how much I will give. In placing the value upon policies during the life of the parties insured it is left entirely with the secretary, who is an actuary. I did not even recommend the payment of $4,000.00. I simply submitted the proposition of Dr. Cook for $4,000.00 without recommending it.

X Intg. 25. Why would you have taken him up at $3,000.00, then, if it had been left to your discretion, as you say?

Ans. Because I thought it would be getting rid of a troublesome matter, which I had always considered his case to be since I had learned of his intemperate habits.

X Intg. 26. Did you or the company authorize Mr. W. W. Morris to negotiate with Dr. Cook for the surrender of the policy, or did he volunteer his services in this regard?

Ans. I don't remember. I remember when I went away one time Mr. Morris said he would talk to the Doctor about it. I don't think I asked him to; could not say positively.

251 X Intg. 27. Do not the records at the home office show, and from them is it not a fact within your knowledge, that Wm. W. Morris was the general agent of the Phœnix Mutual Life Ins. Co. for the State of Kentucky at the time the policy sued on was issued in 1872?

Ans. I have no knowledge of anything about the records of the home office in regard to the general agent of Kentucky.

X Intg. 28. On the Sunday preceding the Monday of June 14th, 1880, did not you and Mr. Morris go to the infirmary where Harvison was lying sick with a letter of introduction from Dr. Wathen to the matron or mother superior of that institution and make special inquiries of her as to the condition of Mr. Harvison and the probabilities as to his living or dying?

Ans. We did go there on that day & make inquiry of her as to Mr. Harvison's condition.

X Intg. 29. Was that before or after you had made a visit to Dr. Cary Blackburn, Mr. Harvison's attending physician, to make the same inquiries of him?

252 Ans. I do not remember which place we visited first.

30. From what you learned from the mother superior at the infirmary did you not feel it was urgent to get the policy from Dr. Cook as speedily as possible lest Harvison should die, and did you not so communicate to your company, and in reply the company authorized you to give the $4,000.00?

Ans. I thought from what I learned from Dr. Blackburn and from what I learned from the mother superior, taken in connection with his intemperate habits, that he probably would not recover from that sickness. I did not anticipate any immediate danger of his dying from anything I learned from either of them, and did not communicate to the company that I thought there was any haste in the matter. I did not see him, and only judged from my knowledge as a medical man that a man having the symptoms that he did, with his habits, as I had understood his habits to be, — would

253 be difficult for him to pull through.

X Intg. 31. Why then did you, on the following day, advance a thousand dollars on your offer in order to complete the purchase of the policy from Dr. Cook?

Ans. Because the secretary of the company authorized me to. I had no authority to give $4,000.00 on Saturday.

32. Before you received that authority from the secretary to give $4,000.00 had you not communicated the then condition of Mr. Harvison to him?

Ans. I had telegraphed to him that Harvison was sick in the hospital, and Dr. Cook offered to take $4,000.00, and asked him if they had anything to say.

33. Had you not also informed him in your telegram that Mr. Harvison was likely to die of his then sickness, or to that purport?

Ans. I think I did. I think I telegraphed that I thought this was his last sickness, or words to that effect.

254 34. Had not the complainant informed you that Mr. Harvison had long before quit his habit of drinking, and that his then sickness was produced from other causes, and did she not communicate that fact to you on your first visit in June?

Ans. I think that she said that she thought he had reformed and was not drinking as badly as he had been; it seems to me that she said she had not known anything about his habits personally during the last two years; that he had been away from here; well, I should probably think it was on my first visit in June; I don't remember now.

35. Do you mean in your preceding answer to give the language used by the complainant, or the purport of what you understood her to say?

Ans. Only the purport of what she said; I could not remember so long the exact langu*g*age.

36. Did she not make that state[ment] in reply to what you
255 had said about the policy being *sa*id on account of Harvison's habit of drinking?

Ans. I think she did.

37. While you say no such conversation occurred on Monday, June 14th, as was detailed by Miss Roberts in her testimony, you do, however, remember, do you not, that in that conversation Mrs. Cook told you that the Doctor was sick and in no condition to transact business, as detailed by Miss Roberts?

Ans. Yes; I remember Mrs. Cook saying that.

Cross-examination closed.

Redirect examination by defendant's counsel:

Redirect. Do you remember what you said in answer to that remark of Mrs. Cook, and what reply was made to your answer?

Ans. I said the Doctor is visiting patients and attending to his business, I believe; I don't remember what Mrs. Cook replied.

Q. At the time you asked Mrs. Cook if Dr. Cook was not the beneficiary in the policy, when she took part in the discussion, did
256 you or not at that moment take out the application to confirm your impression that he was?

Ans. I did.

Recross-examination by complainant's counsel:

R. X Int. 1. Before you took the application out of your pocket then and looked at it had you any doubt in your mind that Dr. A. B. Cook was the beneficiary therein named?

Ans. I can't say that I had much doubt but that he was; I believed he was.

2. Had not you examined it before, and did not you know that he was?

Ans. I had seen the application before, but I did not know but that I might be mistaken as to the beneficiary.

A. W. GOODALE.

Deposition [of] John A. Harvison.

Also the deposition of JOHN A. HARVISON, taken on behalf of the def't The Phœnix Mutual Life Ins. Co.

By Mr. WILSON:

Int. 1. State your age, residence & occupation.

257 Ans. 33 years old; Louisville. Ky.; merchant.

2. Are you the son of the late Wm. G. Harvison, whose wife was a sister of Dr. A. B. Cook, husband of Fanny M. Cook, complainant in this suit, & who died in August, 1880?

Ans. Yes, sir.

3. Are you the same John A. Harvison who testified as a witness for Mary J. Harvison in her suit for divorce in the Louisville chancery court, in which W. G. Harvison was defendant?

Ans. Yes, sir.

4. State what were the habits of Wm. G. Harvison in respect to the use of spirituous liquors during the last ten years of his life; also before August 31st, 1872, and after that time up to the time of his death.

Ans. Well, for three years previous to his death I saw very little of him and don't know much about it. I don't know what his habits were. For the seven years previous to the last three years of his life he was in the habit of occasionally using spirituous liquors to excess. Prior to August 31st, 1872, he used spirituous

258 liquors very moderately. The last part I have answered above.

5. State whether or not he drank spirituous liquors regularly and as a habit or was intemperate for fifteen or twenty years before September, 1877?

Ans. For about ten years previous to that date he drank pretty regularly as a habit, but previous to that period he was a very moderate drinker; he used liquors in moderation.

6. State whether or not during the ten years before September, '77, he drank so as to show the effects; if so, in what way, and whether or not he was during that period intemperate as to the use of spirituous liquors?

Ans. He drank during the ten years, but only to great excess during the latter part of that yeriod. About the only effects noticeable on account of intemperance was failure to do business. I don't know of any bad effects upon his health or system. He was intemperate in the use of spirituous liquors for ten years before September, 1877.

7. State what were his habits during the last 5 years pre-

259 vious to Sept. 25th, 1877, in so far as habit of extreme intemperance or drunkenness was concerned?

Ans. Well, he was at times in the habit of drinking to excess.

8. State whether or not in that five years he drank to such excess as to be under the influence of liquor perceptibly, &, if so, how frequently.

Ans. He did. As to the number of times I cannot say with any degree of accuracy.

9. Was it common or unusual?

Ans. Rather common.

Direct examination closed.

Cross-examination of same witness on behalf of complainant without waiving exceptions and objections:

X Int. 1. Was not Wm. W. Morris, the general agent of the Phœnix Mutual Life Ins. Co. of Hartford, Conn., for the State of Kentucky, on familiar terms of acquaintanceship with your father, and one of his associates during the period of time inquired about in the direct examination, and were not your father's habits of drinking during that period known to Mr. Morris?

260 Ansr. He was an acquaintance, but I don't know that they were what I would call associates. They were frequently together. I think my father's habits of drinking during that period were known to Mr. Morris.

2. Is it not a fact that your father & Mr. Morris frequently drank together during that period, and did you not tell Mr. Morris that you attributed your father's habit of drinking greatly to their association, and request or forbid Mr. Morris to drink with your father?

Ans. I never saw them take a drink together, and I never had such a conversation with Mr. Morris. I don't think that matter was even mentioned between us at any time.

3. Did you not, in Dr. Cook's office, in Louisville, shortly before the death of your father, and while your father was sick in the infirmary, in his last sickness, tell the complainant, Mrs. Cook, in the presence of her daughter, Miss Roberts, that you attributed your father's habit of drinking largely to the influence of Mr. Wm. W. Morris, insomuch that you at one time forbade Mr. Morris to

261 associate or drink with him, or words to like purport?

Ans. I did not; I never made such an assertion.

4. Where were you during the year 1872?

Ans. In Louisville, Ky.

5. Had you quitted school at that time, or were you still as school?

Ans. I had quitted school.

6. Were you in the store with your father during that year?

Ans. I was.

7. During that year, while you were there with your father in the store, was he an habitual drinker to excess, or to what extent did he drink spirituous liquors then?

Ans. He was not an habitual drinker to excess; he drank moderately.

8. How long after that was it that he began to drink to excess?

Ans. Well, from about that period, as far as I know, to 1877.

9. Do you mean that he drank regularly and daily to excess, or that he would occasionally take too much liquor?

262 Ans. Not daily to excess—only occasionally.

10. Did his drinking affect his health or constitution?

Ans. Not as far as I know of.

11. Was his habit of drinking occasionally to excess so pronounced as to be observable by his acquaintances and associates as well as yourself?

Ans. I think it was.

12. During what period of time did your father have a desk in the office of Mr. Wm. W. Morris, the agent of the Phœnix Mutual Life Insurance Co., or occupy that office with Mr. Morris?

Ans. I cannot recollect.

13. Was it before or after 1872, or during the year 1872?

Ans. I think it was during the year 1872 or very soon afterwards, as near as I can recollect.

14. How long did he occupy the office with Mr. Morris?

Ans. Can't recollect exactly how long; think from two to four months.

15. Was that after the failure of the firm of Baird, Harvison & Co.?

Ans. Yes, sir.

263 16. In what kind of business was your father then engaged and where was his business carried on?

Ans. He was engaged in the manufacture of hosiery, and his place of business was on Preston St., I think.

17. During that time, while your father was occupying the office with Morris, was he given to the occasional habit of drinking to excess, about which you have spoken?

Ans. Yes, sir.

JOHN A. HARVISON.

Deposition [of] W. W. Morris.

Also the deposition of W. W. Morris, taken on behalf of same parties.

By Mr. Wilson:

Int. 1. State your age, residence, and what [was] your occupation from 1871 to 1881.

Ans. Age, 47; residence, Louisville, Ky.; occupation from 1871 to 1881, general agent for the defendant, The Phœnix Mutual Life Insurance Co.

2. State whether or not you are in any way connected with the defendant at present, and what interest you have, if any, in the event of this action.

264 Ans. I am not connected with the defendant and have no interest in this action.

3. State what was the nature of the business and duties for which you were the agent for the defendant?

Ans. I was the general agent for the Phœnix Mutual Life Insurance Company for the State of Kentucky; the nature of my business was to solicit insurance, to appoint sub-agents, to countersign and

deliver policies and renewals thereof, and to report the same to the company.

4. State whether or not you were ever authorized to make contracts or to issue policies of insurance for the company?

Ans. I was not, except to make contracts with subordinate agents, in appointing them, and arranging with them as to the amount of commissions they were to receive for duties performed.

5. State whether or not defendant or its officers ever gave you any general authority to settle or adjust claims against it or exist-
265 ing contracts with it, and, if so, what.

Ans. They did not.

6. State under what authority, if any, you undertook, if ever, settlement, compromise, or adjustment of such claims.

Ans. It was special in each case.

7. Do you know Dr. A. B. Cook, the beneficiary in defendant's policy No. 66488, sued on in this action, and filed with defendant's answer as Exhibit P P P, now shown you, and the complainant, his wife, Miss Mamie Roberts, his step-daughter, all now present, and Dr. A. W. Goodale, & Judge J. W. Edwards?

Ans. I do.

8. Are you the W. W. Morris whose name appears upon the application "Q Q Q" filed with defendant's answer in this action and now shown you?

Ans. I am.

9. State whether or not you ever talked with said Dr. A. B. Cook, or complainant, his wife, after Dr. Cook received said policy, in reference to selling, surrendering, or assigning said policy to
266 defendant, and, if so, in what years and how often, as near as you can remember.

Ans. Dr. Cook talked to me about surrendering the policy, I think in 1876, for a paid-up policy; I feel quite sure that he talked to me again in 1877; my impression is that the conversation in 1876 was about reducing the amount of the policy; those are the only conversations that were had, as I believe, up to 1879.

10. State what Dr. Cook said about surrendering the policy in 1876.

Ans. I do not say that he spoke about surrendering the policy in 1876, but about reducing the amount.

11. State what he said about that.

Ans. The policy was issued upon what is known as the "half-note" plan of life insurance—that is, notes had been given for one-half of each annual payment or premium; the amount of cash due upon the policy in 1876 was more than on any preceding year; the Doctor thought the amount of the notes were accumulating, & wished to have the policy brought to cash basis, and wished to know
267 if the notes might not be surrendered, & a policy for a smaller amount issued; that the cash payments were getting too heavy.

12. State when your next interview with Dr. Cook or complainant took place, and that all or either of them said or did at that time about said policy.

Ans. On or before the day the premium was due in 1877 the

policy was surrendered by Dr. Cook for a paid-up policy; the Doctor stated that he was unable to pay the premium; I urged him to continue the payment of the premiums upon the policy; he said that he thought Mr. Harvison would live longer than he, and in his financial condition it would be burdensome for him to pay so large an amount each year; he left the policy with me in my office; I wrote a letter to the company enclosing the policy, and placed them in an envelope directed to the company; during the forenoon and after he left Mrs. Cook came to my office and inquired what the Doctor
268 had done about the policy; I told her it had been surrendered for a paid-up policy, and that it was ready for mailing to the company; she asked me not to send it until she could see the Doctor, and some time before the closing of the mail she returned and stated that the Doctor had arranged for the money, I think, at the Louisville Banking Company, & would continue it; the premium was settled, and the policy was returned.

13. State who signed the names of A. B. Cook and Wm. G. Harvison to that application, "Q Q Q," & whether before or after the policy issued.

Ans. The names were signed respectively by A. B. Cook and Wm. G. Harvison in my presence and before the policy was issued.

14. State where and when that application, "Q Q Q," was filled out or the answers written in, who was present, who gave the answers, and who wrote them in.

Ans. The application was made in the office of Dr. Cook in
269 August, 1872; Dr. Cook and myself were present; Dr. Cook gave them and I wrote them in, save as to question 28; Mr. Harvison answered that.

16. Examine the assignment of said A. B. Cook to complainant, referred to in his deposition as R. C. K., 1, and state when you first heard of that assignment and when you first saw it.

Ans. I never heard of any assignment of the policy having been made until after the death of Mr. Harvison, and now is the first time I ever saw this assignment.

17. State when you first heard that said policy had been surrendered to A. W. Goodale for defendant.

Ans. I heard from Dr. Goodale the evening of the day he said it had been surrendered.

18. State whether the first time you ever saw or heard, or had any information of, said assignment of said policy to complainant, or of any assignment of said policy, was before or after you heard of said surrender of said policy to Goodale.

Ans. It was after the surrender.

270 19. State all that complainant ever said to you, or in your presence before the said surrender of the policy to Goodale on the death of Harvison, in reference to the assignment of any assignment of said policy by Dr. Cook to her.

Ans. Nothing was ever said to me by complainant or by any other person about any assignment of the policy until after the death of Mr. Harvison.

20. State all complainant ever said to you or in your presence of

any interest or claim or right she had in that policy or the money to come from it until after Harvison's death. State what right, claim, or interest, if any, she said or claimed in it or its proceeds.

Ans. Mrs. Cook never intimated to me any claim or right or interest in the policy. She had frequently spoken to me of what I understood to be a future interest in the event of Mr. Harvison's death, but I never understood the slightest intimation there
271 was any rightful claim under the policy, so far as any assignment had been made.

21. State as nearly as you can her words in speaking of the future interest you mention in your last answer.

Ans. I cannot give the words; the impression upon my mind is that upon the death of Mr. Harvison the Doctor was going to give her the proceeds of the policy.

22. State whether or not she ever told you before Harvison's death the Doctor had given her any right to or interest in the proceeds of the said policy.

Ans. No, she did not.

23. State whether or not complainant or Dr. Cook had been to see you in regard to your testimony in this case during the year 1881 or 1882. If so, who came to see you, how often, or which, if either, did you go to see, on whose invitation, whom did you see, where, and what was said to you?

Ans. I do not know that I was seen in regard to my testi-
272 mony in this case. I went to the office of Dr. Cook upon Mrs. Cook's invitation, and heard from Dr. Cook a statement touching the settlement of the policy, and was informed that an assignment of the policy had been made to Mrs. Cook, and was asked as to my recollection of any conversation touching the policy having been taken for the benefit of Mrs. Cook. Dr. Cook and Mrs. Cook have seen me two or three times subsequently.

24. When was it you went to Dr. Cook's office, as stated in last answer?

Ans. It was this year—within the last three months.

25. State whether or not at that or any interview since this suit was brought complainant referred to defendant being engaged in a lawsuit with you, and, if yea, what she said about that.

Ans. I do not remember particularly. There was a passing remark that I now had no interest in the company, & upon one occasion a very emphatic statement that if I would assist in the prosecution of the claim I should be well paid for it.

273 26. Who made that remark that you had no interest in the company, and that if you would assist you should be well paid, and who were present?

Ans. Mrs. Cook made the remark and the statement, but at different times. No others were present.

27. Dr. Cook has testified that when said application was presented to him he asked you why his wife's name did not appear in it as the beneficiary; that it was for her sole benefit, and that he did not want it for himself, and that you replied that as he was a creditor her name could not appear in the application; that he would have

to make her an assignment on a separate paper. State the facts as to those statements.

The witness says here, "Go back to that answer where I spoke of the interview with Mrs. Cook, and if I used the word prosecution I mean now to say that I do not think she used the word 'prosecution,' but that if I would assist her in the matter I should lose
274 nothing by it, and be well paid for it."

30. Dr. Cook has further testified that when the policy came he again asked you if there was no way by which his wife's name could appear in the policy as the beneficiary; that he wanted it so fixed; that under no circumstances should she be deprived of its benefits; that you replied that her name could not appear; that he would have to give her an assignment on a separate paper; that this would be much better and make it much stronger. State the facts as to those statements of Dr. Cook.

Ans. There was no such conversation on the part of Dr. Cook.

31. State whether or not there was any such reply by you as testified to by Dr. Cook.

Ans. No.

32. State whether or not you were asked to attend or received any information of the post-mortem examination that was to be made and was made on Harvison's body.

Ans. No.

275 33. Dr. Cook has testified that for several months you and Dr. Goodale had harassed and besieged him to give up the policy, and had repeatedly stated that if he did not give it up he would not get anything for it. State the facts in regard to that, as to what you did, and, as far as you know, in regard to Goodale.

Ans. In 1879 Dr. Goodale, the adjuster of the company, came here, and with him I went to the office of the chancery court and ascertained the facts as shown in the suit for divorce against Wm. G. Harvison. At the request of Dr. Goodale, I met Dr. Cook at the Galt House, and there was also present J. W. Edwards. I understood Col. Edwards was Dr. Cook's lawyer. Dr. Goodale and Dr. Cook talked about the purchase or cancellation of the policy on the life of Mr. Harvison; this, of course, was in my presence. There was no agreement between the two or the three, and all separated without an agreement. Upon that occasion there was
276 a proposition made to give for the policy what was then the ascertained cash value, which, as I remember, was something less than $1,500.00. Dr. Cook, on the suggestion of Col. Edwards, declined to accept that, and at the same time Col. Edwards suggested that he would not advise less than $3,000.00 to be accepted by Dr. Cook. This Dr. Goodale refused. I have never either harassed or besieged Dr. Cook for a settlement of the policy. I do not know what Dr. Goodale has done, of course. The only thing that I remember ever to have said to Dr. Cook with reference to the settlement of the policy up to the time that the matter was left in my hands by Dr. Goodale was that the amount offered might be of more service to him than any contingent or unknown amount in the

future. I do not mean to say that I used the words "contingent" or "unknown;" that was the idea; but I do mean to say that I advised him to accept the settlement proposed; but in advising him
277 I am sure and am ever certain that I neither harassed or embarras-ed him.

34. Did you or not tell Dr. Cook repeatedly or at any time that if he did not give up the policy he would not get anything for it?

Ans. I did not at any time.

35. State whether or not you ever told Mrs. Cook in Dr. Cook's presence or at any time that as Dr. Cook was a creditor her name could not appear in the policy.

Ans. I think very likely I have told Mrs. Cook her name could not appear in the policy, Dr. Cook being a creditor, and I will say farther in that connection that Mrs. Cook, upon more than one occasion, has expressed surprise that her name had not appeared in the policy, and upon oft-repeated occasions she had asked me to get the Doctor to make the assignment of the policy to her.

36. Do you remember as a fact that you ever told Mrs. Cook that her name could not appear in the policy, Dr. Cook being a creditor; if so, when did you so tell her? State any time or place
278 you remember.

Ans. I do remember as a fact that I told Mrs. Cook that her name could not appear in the policy because of the policy being issued in favor of Dr. Cook as a creditor, and that frequently Mrs. Cook desired me to get the Doctor to make an assignment of the policy to her. It was frequently in the office of Dr. Cook, but some time after the policy was issued.

37. Dr. Cook has testified that in June, 1877, he saw a notice in the paper that Harvison's wife had applied for a divorce, one of the complaints alleged being drunkenness, and that after reading that notice he saw you and stated the fact & asked you if the habits of Harvison would not vitiate the policy, and you assured him that it would have no effect. State the facts as to that.

Ans. If Dr. Cook has stated in his affidavit that he mentioned to me at any time about Mr. Harvison's intemperate habits he is certainly mistaken, up to the time that Dr. Goodale was here in 1879. Dr. Cook did show me, or rather held in his had, a cut
279 from a paper, which he said stated that Mrs. Harvison had been divorced, and asked me if that fact would cut any figure in the policy. I replied that it could not. I did not have the paper. I did not read it, and I knew nothing of the cause of the divorce at that time.

38. State whether or not Dr. Cook ever asked you if the habits of Harvison would not vitiate the policy.

Ans. He never did.

39. State whether or not you ever assured him that any habits of Harvison would have no effect.

Ans. I never did.

40. Dr. Cook has testified that he took said policy to you when the premium was due in August, 1887, stating that Harvison's habits had changed, that he was afraid he would have trouble about

the policy and did not want to pay any more money on it, and you again advised him to pay the premium — keep the policy alive; that it was a good investment and that the money would be sure after Harvison's death. State the facts as to those statements.

280 Ans. Dr. Cook presented the policy to me. I advised him to keep it up. I thought it a good investment, but I most emphatically, and most positively, and, as God is my judge, I do say that the question of Mr. Harvison's habits were not spoken of on that occasion, and that the only reason Dr. Cook offered for a surrender of the policy was his inability to pay the premium.

41. Dr. Cook has testified that at the time he left the policy with you to be sent to defendant you stated postively to him that the drinking habit would not effect the policy. State whether or not you did so state to him.

Ans. I made no such statement. His habits were not mentioned or spoken about.

42. Dr. Cook has testified that but for your assurance that the changed habits of Harvison would not effect the policy he would not have paid the premium. State every such assurance you ever gave Dr. Cook.

281 Ans. I state most emphatically that Dr. Cook never made me such statement and I never gave any such assurance.

43. Dr. Cook has testified that he first learned of Harvison's drinking in 1875, and that when he first learned of it he called on you and informed you that Harvison was drinking. State the facts as to Dr. Cook's informing you in 1875 or at any other time that Harvison was drinking, and when was the first time that you heard that Harvison was in the habit of drinking.

Ans. Dr. Cook never stated to me that Harvison was in the habit of drinking, and I never knew or heard of his intemperate habits until having seen the papers in the court in reference to the divorce; I think in the fall of 1879.

44. Dr. Cook has testified that in 1875 or 1876 you informed him, in his wife's presence, that you saw Harvison drunk in the street, and that Harvison was about to fight you. State whether or not you so informed him.

282 Ans. Some time in 1875, or '76, I believe, while coming up Main street with Col. Shaffner, I was accosted at the corner of 4th & Main by Mr. Harvison, and his manner towards me was very violent. It grew out of a suit I had brought against him, and I mentioned the fact to Dr. Cook in the presence of Mrs. Cook. I do not know that Harvison was drunk, nor do I believe that I said he was drunk or under the influence of liquor, as I had no means of knowing.

Int. 45. Dr. Cook has testified that after Goodale's visit in January, 1880, you became more persistent in your demands for a settlement. What is the fact as to this?

Ans. So far as I was personally concerned, I do not think that I ever was persistent.

46. Dr. Cook has testified that during the interview between him and Judge Edwards & you, at his office, his wife came in and said

sharply to you, "That policy was taken out for my benefit, and you know it, and I will never consent to any compromise." State the facts about that.

283 Ans. There was a conference among Dr. Cook, Judge Edwards, & myself at Judge Edwards' office, in which Dr. Cook agreed to take from the policy $2,500.00 in cash and the surrender of the notes that had been given by him. This was on a Saturday. Dr. Cook made the point that before the proposition should be accepted by the company he would like to hear or know of Mr. Harvison's place or condition, or something to that effect. The agreement between Dr. Cook & myself in the presence of Judge Edwards, & in the office of Judge Edwards, was that I would write to the company that evening or that day, and in the event of the company's accepting it I would ask the company to telegraph me what to do. In that interview I distinctly stated to Dr. Cook, and it was so understood by him, that if Mr. Harvison was sick or dead up to the time of receiving the answer from the company, and the time fixed was

284 Wednesday, the proposition for the amount to be paid should not affect Dr. Cook's interest in the policy, & that he would have a claim for the whole amount of the policy. After that interview I wrote to the company on the same day, and on the Tuesday following I received a telegram from the secretary of the company, authorizing me to settle upon the terms proposed, and this is as well as I can remember, if I could do no better.

Counsel for complainant here asks to have the telegram referred to produced and filed with this deposition.

Upon the receipt of the telegram I went to the office of Judge Edwards, and with him went to the office of Dr. Cook. I there stated to Dr. Cook that I was ready to settle the Harvison policy upon the terms agreed upon. I had previously shown the dispatch to Judge Edwards. Dr. Cook stated that Wednesday was the day fixed; that he had not heard from Mr. Harvison, and desired to hear from him or of him, and asked a postponement of the settlement, to which I consented. I have already stated all of the interview that took place upon that occasion in Dr. Cook's office,

285 and I will say further that no intimation was made to me at that time, or at any other time previous to the death of Mrs. Harvison, that the policy was owned or claimed by any person other than Dr. Cook.

47. Please state whether or not Mrs. Cook, the wife of Dr. Cook, during the interview at Dr. Cook's office between Dr. Cook, Judge Edwards, & you, or at any other time or place, said to you the following words: "That policy was taken out for my benefit, and you knowed it, and I will never consent to any compromise," or any words to that effect.

Ans. No.

48. Judge Edwards states that his recollection is that during the interview, when you took him with you to Dr. Cook's office, after the telegram was received by you, Mrs. Cook came in and in an excited manner opposed any settlement, and told you that she owned

the policy, and it had been assigned to her, and that in substance she said that you knew it had been taken out for her benefit
286 and assigned to her, according as you had directed Dr. Cook to make the assignment; that the assignment had been made to her through you or your agency. State your recollection as to each of such statements of Judge Edwards.

Ans. My recollection of that interview is quite clear. Dr. Cook desired a postponement of the adjustment. I am not only sure but am very certain that no intimation was made to me at that or any other time, except as I have already stated, that any assignment of the policy had been made. I am very certain that Mrs. Cook did not tell me upon that occasion that she owned the policy or that the policy had been assigned to her, and I am equally certain that the desire of the Doctor to postpone the matter until Wednesday, the day fixed, made the interview a short one. Unquestionably Mrs. Cook did not come in and in an excited manner oppose any settlement. Neither in substance nor in fact was any such statement made by her as that "I knew it had been taken out for her
287 benefit" or assigned to her according as I had directed Dr. Cook to make the assignment. I have already stated, and state again, that I never knew of any assignment of the policy until after the death of Mr. Harvison. No words of that kind—that is, that the assignment had been by me or through my agency—were ever used by Mrs. Cook to me until after the death of Harvison.

49. Miss Roberts, who is present, has testified that in the interview between you, Judge Edwards, & Dr. Cook at Dr. Cook's office, when a controversy was going on as to whether Dr. Cook had agreed to take $2,500, she and her mother came in, and Mrs. Cook told you that she did not intend for you to worry the Doctor any more; that you knew it was her policy and had been assigned to her by your dictation, and she did not intend to make any compromise at any price, and that you said you knew it was her mother's policy, but she had better accept the company's offer. State whether or
288 not Mrs. Cook made these remarks above mentioned, or any of them, to you, and whether or not you made the answers above mentioned, or any of them, to Mrs. Cook; and, if so, which ones.

Ans. Mrs. Cook never stated to me that the policy was hers, or had been assigned to her by my dictation, or any words to that effect, until after the death of Mr. Harvison. No, I don't remember any such statement as that "she did not intend that I should worry the Doctor any more." I did not say "that I knew it was her mother's policy, but that she had better accept the company's offer." She did not say that she did not intend to make any compromise at any price.

50. State how long Wm. G. Harvison occupied a desk in your office, and how often or how much did you see him while there. What year was it in?

Ans. He had a desk there for two or three months. I saw very little of him. I do not remember the year. He was not in the office

more than—I will say—an average of an hour in a week,
289 and during that time he was engaged in the manufacture of hosiery.

52. State whether or not you and Goodale read over the petition of Mrs. Harvison, or the depositions on file in the case, or any of said papers.

Ans. My impression is that I read them all over and Dr. Goodale made transcripts of them. I do not think there can be any doubt about that.

54. State what happened next between you and Dr. Cook, or you and Mrs. Cook, after the interview of Tuesday at Dr. Cook's office, when he told you that he had until Wednesday. Did you go back Wednesday; and, if so, what, if anything, was said in reference to the negotiations about the said policy?

Ans. I do not know what happened next between Dr. Cook & me, but the Doctor made several appointments to meet me, and upon one day I received a note from him declining to make the settlement proposed; to that note I replied and sent a copy of it to the company. I file the note received from Dr. Cook marked "W.
290 W. M., No. 2," and dated March 13th, 1880, and make it part of my deposition.

55. State whether or not subsequently, or about that time, March 13th, 1880, the complainant, Mrs. Cook, had an interview in reference to settling that policy. If so, where, who were present, and what did she say?

Ans. After the death of Mrs. Harvison Mrs. Cook came to get from me the blank proofs of death.

56. Did Mrs. Cook have an interview with you during the delays between the time you told Dr. Cook the company would accept the $2,500.00 proposition and the receipt of Dr. Cook's note of March 13th, when Dr. Cook was present with her; &, if so, what did she say?

Ans. I think not, until Mr. Harvison's death.

57. State when Mrs. Cook desired you, as stated by you in answer to question 36 above, which is now read to you, "to get the Doctor to make an assignment of the policy to her." How long was it after the policy issued that she first so desired it?

291 Ans. I do not know when, nor how long after the issue of the policy. The request was made frequently.

58. Was the first request by Mrs. Cook for you to get the Doctor to make the assignment of the policy to her more or less than two months after the policy was delivered to Dr. Cook?

Ans. I could not say with any degree of accuracy either when or how soon after, but the request was certainly made more than two months after the issue of the policy & *after* several months after the issue of the policy, and it may have been before the expiration of the two months as well.

59. Examine the original papers now shown you—viz., the petition, the depositions of Mary E. Harvison, Kitty C. & John A. Harvison, and George J. Cook, and the draft of judgment in the case, No. 31801, Louisville chancery court, of Mary J. Harvison against

William G. Harvison—and state whether you have seen those papers before, when you first saw them, and who were present, and
292 whether or not you read said papers at said time—you or the persons then with you?

Ans. I have seen them before; I saw them in 1879; that was the first time I saw them. Dr. A. W. Goodale was present. I think it was in the fall; I can't state the months. I did not read the papers in full; I read the petition & the depositions of Mrs. Harvison, Miss Harvison, & Dr. Cook and Dr. Goodale; made partial extracts from them.

62. State the last interview you had with Mrs. Cook about this case, where it was, who were present, and what took place.

Ans. I think the last interview was at the corner of 4th and Oak streets, but there was very little said about the case. Mrs. Cook desired to have an interview with me, and stated that she had been to my house to see me, and I think I made an appointment to go to the Doctor's office the next day. There was no one immediately present excepting Mrs. Cook, her daughter, and myself.

293 63. State whether or not Dr. Cook ever informed you before the death of Harvison that the policy sued on was taken out, or was to be taken out, for the benefit of his wife.

Ans. No.

Direct examination closed.

Cross-examination of same witness on behalf of complainant commenced at same time & same parties present.

X Int. 1. Are you the Wm. W. Morris who signed the recommendation of this risk on the application and recommended this risk to the defendant?

Ans. I am.

2. Did you, on the same day that you procured the answers to the questions in this application marked Exhibit "Q Q Q," carry Mr. Harvison to the medical examiner of the company to be examined?

Ans. Mr. Harvison was examined twice upon that application. Whether or not he was examined first upon the day he signed that application I can't tell from memory. I am sure the second examination was not upon the same day. I think the second ex-
294 amination was more than a week after it.

3. Were you present at both of those examinations?

Ans. I was.

4. What medical examiner of the def't made those examinations?

Ans. I am not sure, but I think it was Dr. Satterwhite and Dr. Leachman.

5. Did both of them sign the certificates of examination?

Ans. If they were the examiners they signed the certificates separately.

6. Did they sign the certificates on the one application, or was there more than one application?

Ans. There was but one application. My recollection is that one was signed by one of the medical examiners, on the back of the application, and a separate certificate was made by the other.

7. Which one of them made the separate certificate?

Ans. I think Dr. Leachman. I am not positive as to that.

8. Which of the medical examiners made the first examination?

295 Ans. My impression is that Dr. Satterwhite made the first, but it is an impression as to either or both. I have no positive recollection, although both examinations were made in my office.

9. Was the separate examination you have spoken of written on the application or appended to the application?

Ans. My recollection is that the application and the first examination was sent to the home office, and the amount being for more than $10,000.00 the company required an additional examination, and that that additional examination was sent upon a separate blank.

10. Was Mr. Harvison occupying a desk in your office at that time?

Ans. No, I think not.

11. Was it before or after that time that he occupied a desk in your office?

Ans. I think it was after that time.

12. How long after that time?

Ans. I do not remember how long after that time he occupied a desk in my office. He and his partner, jointly, had a desk
296 for two or three months, but neither was in the office but very little of the time.

13. Who was his partner?

Ans. I do not now remember his name. He was from Albany, Clinton Co., this State.

14. Did they pay you rent for the desk room in the office?

Ans. There was no fixed price agreed upon, and if any was paid it was a small amount, and I do not now remember the amount.

15. Did not you enter the rent received from them in your day-book or cash-book, and can't you refer to such entry and tell us the exact time that Mr. Harvison occupied desk room in your office?

Ans. I did not and I cannot.

16. Was it after the dissolution of the firm of Baird, Harvison & Co. that he occupied desk room in your office?

Ans. It was some time afterwards.

17. How long had you known Wm. G. Harvison at the time this application was made?

297 Ans. I was first introduced to him after the firm of Baird, Harvison & Co. was formed. I should think I had known him two or three years before the application was made.

18. At the time the application was made, was your acquaintance with him intimate or casual?

Ans. It was not intimate. I had a business acquaintance with him.

19. Did your acquaintance with him become more intimate after the application was made, or was your business acquaintance with him increased after that time?

Ans. My business acquaintance with him was not increased after that time, and I never had any intimate acquaintance with Mr. Harvison.

20. If you had no intimate acquaintance with him, why did you furnish him desk room in your office without fixing the price of the rent?

Ans. I suppose because of a kindly feeling for an unfortunate man. He asked me the privilege and I granted it.

21. Who brought him to your office on the two occasions
298 to be examined by the medical examiner?

Ans. I did.

22. Where did you find him on those occasions?

Ans. I think the second time on Main street, between 5th & 6th, and the first time I do not now remember. I remember the second time more particularly, because I had to explain the reason why the second examination was required.

23. At that time did you know his general reputation amongst those who knew him as to his habits of temperance and sobriety?

Ans. I don't know as to a general reputation. I know of individual persons who spoke of him as a temperate man and a good citizen.

24. Was he not at that time a teacher in Sunday school, a regular attendant at prayer meetings and other meetings of the Presbyterian Church, of which he was a member, and frequently offered up prayer in public at his church?

Ans. Of my own knowledge I do not know, but I had been
299 told by members of the First Presbyterian congregation that he was an active member of that church.

25. Had Mr. Harvison signed the application before the first medical examination of him was made, or did he sign it in your office at that time?

Ans. He signed it before the medical examination was made.

26. How many days before that first medical examination was made?

Ans. I do not know how long; it was signed in my office and before that medical examination was made.

27. Was it on the same day?

Ans. I do not now know.

28. Did you send for him to sign the application before the medical examination was made?

Ans. I don't think I sent for him. I think I sought him.

29. Did he sign it before or after Dr. A. B. Cook signed it?

Ans. I think it was after Dr. Cook signed it.

30. How many days after?

300 Ans. I cannot tell how many days after, or whether it was the same day. I was very anxious to get the insurance, and I don't think that was delayed very long.

31. How long had you then been general agent for the defendant for the State of Kentucky?

Ans. About 5 years.

32. About how many applications had been made on policies issued through you up to that time?

Ans. I rec-on 300 or 400; perhaps not so many; maybe more.

33. Had the company furnished you with blanks containing printed questions and instructions for taking applications, and did the company furnish you with the blank on which this application was made?

Ans. Yes; the company furnished me with all the blanks used.

34. I find printed in large type at the top of this application this instruction: "Questions to be answered by the person whose life is proposed to be insured and which forms the basis of the contract."

Did you understand in this application that the person to be
301 insured was Wm. G. Harvison?

Ans. I did.

35. Did you comply with that instruction in this case?

Ans. The questions and answers were read to Mr. Harvison. Both Dr. Cook and Mr. Harvison answered the questions in the application before the application was signed by either.

36. Who made the answers to the questions which you wrote down as you wrote them down?

Ans. My recollection is that Dr. Cook made the answers to the questions as they were written down, and the application was afterwards shown to and signed by Mr. Harvison.

37. Did Dr. Cook sign the application at the time he made the answers as you wrote them down?

Ans. I think so; he signed it before Mr. Harvison did.

38. Was Harvison present when Dr. Cook answered the questions and signed the application?

Ans. No, sir.

302 39. Did you consider Dr. Cook competent and possessed of sufficient knowledge of Mr. Harvison and of his family and their history to answer the 29 printed questions in the application to your satisfaction and the satisfaction of your company?

Ans. He answered them, whether competent or not.

40. Did you inform your company when you sent forward the application that the questions had been answered by Dr. Cook, the beneficiary, and not by Wm. G. Harvison, whose life was proposed to be insured?

Ans. I did not.

41. When the policy was issued did the company know that fact?

Ans. Not that I know of; I should think not.

42. If you concealed that fact from your company when you forwarded the application, & when the company issued the policy & when you countersigned & delivered it and received the premiums thereon and transmitted them to the company, what induced you to develope it in your direct examination?

303 Ans. There was no concealment in the matter; the application was signed as is usual when the application is made by one person for the benefit of another; there was no departure from the usual custom in this case, and there was no inducement to de-

velope the fact in the direct examination, except to answer the question, as I thought, truthfully.

43. Did you believe at the time you took Dr. Cook's answer to question 14 in the application that he had sufficient knowledge of Mr. Wm. G. Harvison to answer truthfully and correctly that question?

Ans. Of course I did.

44. Where did you write the answers in this application that Dr. Cook made?

Ans. At Dr. Cook's office.

45. You have stated that he answered all the questions excepting 28, and that was answered by Mr. Harvison; where did you write that answer of Mr. Harvison?

Ans. I am not sure whether in Dr. Cook's office; I think very likely it was.

304 46. Was Mr. Harvison there at that time to give you the answer that you wrote?

Ans. No, he was not.

47. Where was Harvison when he signed this application?

Ans. At my office.

48. When you wrote these answers in the application made by Dr. Cook, as you stated, did you make use of the same ink out of which he signed his signature?

Ans. As to that I don't know.

49. Was this application made and the policy taken out by Dr. Cook at your suggestion & solicitation?

Ans. No; the first suggestion was made to me by Dr. Cook, and in the conversation he stated that he thought of taking $10,000.00 in the Southern Mutual Life Insurance Co., for which he had been the examiner, and $10,000.00 with me, but would take $20,000.00 in the Phœnix Mutual Life Insurance Company.

305 50. Did Dr. Cook at that time tell you that he wanted to take out the policy for the benefit of his wife, and give as a reason for it that his family had fallen out with him on account of his marriage, and that when he died he wanted his wife to get all of his estate?

Ans. No, not so far as I believe. Dr. Cook did state in a conversation at or about that time that he would take a policy on his own life—if insurable—for the benefit of his wife; and I will say, further, that it may have been in the same conversation touching the insurance on the life of Mr. Harvison, who was his brother-in-law & debtor.

51. Did he not in that conversation, when he concluded that his life was not insurable, adopt your suggestion to take a policy on the life of his debtor, Harvison, for the benefit of his wife, this complainant?

Ans. There was more than one conversation about insurance. I feel quite sure that in reference to the insurance on the life of Mr. Harvison nothing was said by the Doctor about taking the insurance for the benefit of Mrs. Cook, and that I am sure that I made

306 no such suggestion.

52. When Dr. Cook saw in this application and in the policy issued thereon, at the time you delivered it to him, that he was named as the beneficiary, did not he ask you why his wife had not been named as a beneficiary in the policy, and did not you reply to him that, being a policy on the life of a debtor, the creditor alone could be named in it as beneficiary, or words to that effect?

Ans. No such conversation took place between Dr. Cook and myself.

53. Did you at any time tell Dr. Cook that, as it was a creditor's policy on the life of debtor, the creditor would have to be named as beneficiary in the policy, or words to that effect?

Ans. No; I think not.

54. Where did you deliver the policy to Dr. Cook?

Ans. I think at his office.

55. Was Mrs. Cook present at the time?

Ans. I do not remember.

56. Did not both Mrs. Cook & Dr. Cook examine the policy
307 when you delivered it?

Ans. The only recollection I have about that is that I presented the policy to Dr. Cook with the statement of the amount of premium due after deducting the part of the commissions that I had allowed to him. I do not remember, nor do I believe there was, any conversation as to the form of the policy. Not so far as I remember or believe did Dr. or Mrs. Cook examine the policy when I delivered it, although about this I will not be positive. Dr. Cook examined the policy. What I meant to say was that Mrs. Cook was not present and examined the policy. Of what I have stated about Mrs. Cook's presence I am not positively certain.

57. Did not Mrs. Cook call your attention to the fact that her name was not in the policy as beneficiary and express surprise at it, as she said you knew the policy was taken out for her benefit, and in reply to her did you not say that, it being a creditor's policy, *that* the creditor alone could be named as beneficiary, or
308 words to that effect?

Ans. I do not think any conversation of that kind occurred at that time, nor at any time, in the presence of Dr. Cook.

58. Did you at any time explain to Dr. Cook that, it being a creditor's policy, his name had to appear in it as beneficiary, or anything to that purport?

Ans. The application was made; Dr. Cook's name was inserted in the application as beneficiary; the policy was issued upon the application. I never made any explanation to him about it, and he never sought any explanation. I did not at any time explain to Dr. Cook that, it being a creditor's policy, his name had to appear in it as beneficiary, nor anything to that purport.

59. Then you did not at any time explain to Dr. Cook or complainant why Dr. Cook's name appeared in the policy as beneficiary?

Ans. I do not pretend to say that I never explained to Mrs. Cook.

309 60. Did you explain that to Mrs. Cook at any time; if so, when and what did you tell her?

Ans. Mrs. Cook frequently asked me why I did not have the policy made for her benefit, and I stated to her that she had no insurable interest in Mr. Harvison's life, but that the Doctor could assign the policy for her benefit.

61. When was the first time Mrs. Cook asked you that, and you made that explanation; was it before or after the policy issued; and, if after, how long?

Ans. It was after the issue of the policy. I do not remember how long after—was the first time—but there were frequent requests upon the part of Mrs. Cook that I should ask the Doctor to make the assignment.

62. Were you a relative of Mrs. Cook, or in any wise connected with her in business, or her agent or attorney that she should request you to do that service for her, or were you the confidential friend or adviser of Dr. Cook at that time?

310 Ans. I was no relation, so far as I knew, except by ordinary descent from Adam. I had no business relations, nor was I her attorney *nor* agent. No; I was not Dr. Cook's adviser. The relations between Dr. Cook and myself were very intimate.

63. How came Mrs. Cook to ask you why her name did not appear in the policy as beneficiary?

Ans. I don't think that I have anywhere said that Mrs. Cook asked me any such question. I have stated that Mrs. Cook asked me why I did not have her name appear in the policy, but why she asked it I don't know.

64. Had you understood before that from her or Dr. Cook that she was to be the beneficiary in the policy?

Ans. I have never understood before that from her or Dr. Cook that she was to be the beneficiary in the policy beyond the statement of Mrs. Cook to me that the proceeds of the policy were to be
311 hers, but no statement to that effect had been made to me by Dr. Cook.

65. Did not you understand both from Dr. Cook and Mrs. Cook, or either of them, that the policy was to be taken out or was taken out for the benefit of Mrs. Cook?

Ans. I never understood from Dr. Cook either before or after the issue of the policy that the policy was to be taken for the benefit of Mrs. Cook, and I never understood from Mrs. Cook other than what I have already stated, and that was after the issue of the policy, and that was why I had not had the policy issued for her benefit, and the request that I should ask the Doctor to make the assignment, and that request was frequently repeated.

66. Did you comply with that oft-repeated request and ask the Doctor to make the assignment to her?

Ans. No; I think I never mentioned the matter to the Doctor.

67. Did you explain to the complainant or to Dr. Cook
312 how the assignment of the policy could or should be made to her?

Ans. I did not to Dr. Cook. I told Mrs. Cook that the assignment could be made for her benefit and that I had blank forms of

assignment in my office that I could furnish her at any time. These blank forms are issued by the company.

68. How long after the policy issued did you inform her that you had such blank form in your office and how many times did you so inform her?

Ans. I do not know how long after or how many times. Mrs. Cook had repeated conversations with me about the policy and the assignment thereof.

69. Did you furnish complainant with blank form of assignment?

Ans. No, I think not.

70. Did you give complainant to understand that you would make the effort to get Dr. Cook to make the assignment that she requested of you so frequently?

Ans. I may possibly have intimated to her; very likely
313 I did; I never did mention the matter to the Doctor.

71. You intentionally deceived her about it, then, did you?

Ans. Well, I rec-on I intentionally deceived her. I rec-on I wanted to get rid of persistency.

72. In your answers you seem to make a distinction between complainant's being named in the policy as beneficiary and the policy being taken out for her benefit. At the time she urged you to get Dr. Cook to assign it to her did she not then claim that it had been taken out for her benefit?

Ans. No.

73. How came it, then, that you advised her about the assignment of it?

Ans. I advised her as to the manner of the assignment. I do not pretend to say that Mrs. Cook did not at some time say that the policy was to be taken out for her benefit.

74. In answer to direct question 25 you say, "and upon one occasion a very emphatic statement that if I would assist in the prosecution of the claim I should be well paid for it." Please
314 state when and where and who was present on that one occasion when the complainant made that very emphatic statement to you.

Ans. In an explanation of that answer I stated that the word "prosecution" was not used. I do not know when except that it was some time after notice had been served on me that suit had been brought. It was on 6th street between Market and Jefferson. I was on the pavement and Mrs. Cook was in a rockaway. I am not sure but that her daughter was in the rockaway with Mrs. Cook.

75. Was not her driver there also?

Ans. I think he was.

76. Was that interview a long one or a short one?

Ans. Only a few minutes.

77. Be kind enough to repeat the exact words used to you by Mrs. Cook on that occasion about your helping her in the case and the reply you made to her.

Ans. I shall not pretend to use the exact words that I used in the

case or that she used. I cannot state more than I have already
315 stated in the direct examination.

78. Did you understand from what complainant said to you upon that occasion that she would pay you well to assist her in the case if you would swear falsely for her?

Ans. She stated to me that I ought to remember that the policy was taken out for her benefit, or was to be for her benefit, and — I had no longer any interest in the company, I could be of assistance to her, for which I should be well paid. I stated that I could not give any statement excepting what was true, but I did not understand that Mrs. Cook made any proposition to me to make any false statement. I do not pretend to give the exact words; that is the substance as I remember the conversation.

79. Is it not a fact and did you not so understand her at the time that she only wished you to make a truthful statement of the facts as you remember them in so far as the policy was taken out for her benefit and your direction to her as to how the assignment should be made to her?

316 Ans. Her desire, so far as I could understand the expression, was that I should remember that the policy was to be for her benefit; there was no intimation that I should make an untruthful statement.

80. How long, or about how long, after this suit was commenced did you hold that conversation with her, and did you not in that interview ask her if she had brought suit?

Ans. It was several months after the suit had been brought; I did not in that interview ask her if she had brought suit; I knew she had, because I had been served with notice.

81. After the death of Harvison and before this suit was brought, did you not, in an interview with Mrs. Cook at the office of Dr. Cook, in the presence of Miss Roberts, state to her that she ought to sue for the whole policy & not credit it with the notes; that she could recover the whole of it, and that you as a friend would advise her to employ Isaac Caldwell & Mr. Bijur as her attorneys in the case?

317 Ans. After the death of Mr. Harvison Mrs. Cook told me that she was going to bring suit against the company; I told her what the law of Connecticut and Kentucky was with reference to a policy of life insurance assigned for the benefit of a married woman, and that if the policy had been regularly assigned she had a claim for the full amount notwithstanding its adjustment; she asked me to suggest the name of a lawyer. I suggested Col. Mundy or Isaac Caldwell; she asked me if I would see Isaac Caldwell; after the suit had been brought she stated to me the amount which she claimed, which, as I remember, was something over $7,000.00, and I asked her why she did not bring the suit for the full amount of the policy for $20,000.00; she stated that there were outstanding notes against the policy, and I replied that those were the notes of Dr. Cook; that was the substance of the conversations; I think very likely Miss Roberts was present; she usually was, and it was at the office of Dr. Cook.

318 82. Did you not in that interview state to complainant in the presence of Miss Roberts that in obtaining the policy from Dr. Cook Dr. Goodale had made a blunder or mistake, or words of like purport, and that you would not have taken the assignment of Dr. Cook without the signature also of complainant, *and* as you knew the policy belonged to her?

Ans. I made no such statement to anybody or in anybody's presence that I knew the policy belonged to Mrs. Cook or was taken for her benefit. Mrs. Cook told me, in reply to a question, that she had stated to Dr. Goodale at the time of the settlement of the policy with Dr. Cook that the policy belonged to her, and warned him at his peril not to settle it without her consent. I then said Dr. Goodale made a great blunder in not getting her receipt for the amount paid.

83. How many times did you see Dr. Cook and interview him about purchasing this policy?

Ans. Half a dozen times or more.

319 84. Did you go to him or he come to you on those occasions?

Ans. The first time was in company with Dr. Goodale, as I remember. Dr. Cook and Judge Edwards met Dr. Goodale and myself at the Galt House by appointment with Dr. Goodale. Subsequent to that I went to see Dr. Cook each time, with the exception of once or twice that he came to see me. The times he came to see me were by previous appointments made at his office, where I had gone to see him.

85. Was not Dr. Cook in feeble health in that period of time—afflicted with carbuncles and confined to his room a great portion of his time?

Ans. The Doctor was complaining. I do not know that he was confined to his room at that time.

86. On the Sunday before Dr. Cook assigned this policy to the company, didn't you and Dr. Goodale in company call at the infirmary, and at the office of Dr. Cary Blackburn, to make inquiries as to the condition of Harvison's health and the probabilities of his dying very soon?

320 Ans. I know of the settlement of the policy only from Dr. Goodale's statement. The Sunday previous to this statement by Dr. Goodale to me I went in company with him to St. Joseph's Infirmary, and he inquired of the mother superior as to the condition of Mr. Harvison, and the next morning we called upon Dr. Blackburn, of whom Dr. Goodale made inquiry as to Mr. Harvison's health.

87. From what you learned from them were you led to believe that Mr. Harvison was in his last illness and would soon die?

Ans. I was not led to believe that he was in his last illness; my impression was that he would get up again; but he was very seriously ill, according to their statements.

88. Did you go up to his room to see him on that occasion?

Ans. I did not.

89. Did you go to see him at all while he was lying sick here in Louisville?

Ans. I did not.

90. Hadn't you and he been friends for years, and were you not concerned both as a friend and as the agent of the insurance
321 Co., in which a large policy was held on his life, as to the condition of his health?

Ans. No.

91. Hadn't you been friends and correspondents for several years?

Ans. No.

92. If Mr. Harvison had the habit of drinking at the time the policy was issued had you any knowledge of that fact?

Ans. I had not.

93. Had you not sufficient knowledge of him and of his habits at that time to know that he was a man of temperate habits and that he was not intemperate?

Ans. So far as I could judge, though my acquaintance was not intimate, I believed him to be a temperate man.

94. Would your company at that time take a risk on the life of a man who was of intemperate habits?

Ans. No; not if they knew it.

95. If you did not know then that he was a man of temperate habits why did you recommend the risk to your company as a good one?

322 Ans. I recommended the application of Mr. Harvison because I believed him to be a temperate man and an excellent risk for insurance.

96. Upon what did you found that belief?

Ans. Upon his unusual robust health and unusual strength.

97. If you were not intimately acquainted with him, how did you know of that unusual robust health and strength?

Ans. I had seen him several times develop his muscles, and I thought I had never seen a man of his age with more apparent muscular power. By distending his arms and lifting was the manner by which the muscular powers were developed. It was at the store of Baird, Harvison & Co.

98. If Mr. Harvison had the habit of drinking to excess at the time the application was made, was not your knowledge of him such that you would have known it?

Ans. I should think so.

99. If he had such habit then, and that fact was concealed
323 from the company, would not the policy have been void from the beginning?

Ans. I can't answer that question.

100. Have you not been so instructed by your company that where false answers were made to the questions in the application the policy would be void?

Ans. No, I have not.

101. Were you not so instructed in the very application you filled up for this policy?

Ans. No more by the applications than by the policy itself.

What I meant to say in answer to the last question was that I had received no special or specific instructions from the company.

102. Were you not so instructed in the application furnished by the company?

Ans. If that be an instruction I was so instructed.

103. Please read from the application that instruction.

Ans. I don't discover any instruction to the agency in this application. It appears to be a condition which the applicant himself makes.

104. Did you not read that condition at the time or before you filled up this application?

324 Ans. I have read that or similar applications frequently; the blank forms of application are all the same.

105. Did you read that condition in this application; I mean did you read question 29 to the applicant or to Dr. Cook at the time you took the answer to it?

Ans. I think so.

106. Had you instructed them of that fact before you took the answer?

Ans. I don't understand the question.

107. I will read the question to you that you may understand it: "Is the party and the applicant aware that any untrue or fraudulent answers to the above quiries or any suppression of facts in regard to the health, habits, or circumstances of the party to be answered will vitiate the policy and forfeit all payments thereon?" Had you instructed the parties or either of them before you wrote the answer to this question that such was the condition upon which the company would issue the policy?

Ans. I don't think I instructed them.

325 108. How else could they have learned the fact?

Ans. I might have read the application and the conditions thereof.

109. Didn't you tell Dr. Cook in 1875, at his office, that you had seen Mr. Harvison on the street drunk, and that he wanted to make a difficulty and fight you?

Ans. I am very sure that I did not tell him I saw him drunk.

110. Didn't Dr. Cook, in 1877, come to you at your office and show you this slip cut from the newspaper, and ask you if such fact if true would affect the policy? (Witness here shown slip referred to.)

Ans. Dr. Cook showed me a cut from a paper upon the steps of his office, & at that time stated that Mr. Harvison had been divorced, and asked me if that would have any effect upon the policy of insurance; I did not read the paper; this is the first time I ever have read it, and it was never shown to me in my office.

111. Is that the slip of paper he showed you?

326 Ans. I do not know, but it is very like it; it was about that size; I think he took it from his pocket-book.

112. Do you state it as a fact positively that you did not read this paper at that time, and that Dr. Cook did not read it to you?

Ans. I state it as a fact positively that I did not read that paper at that time, nor did Dr. Cook read it to me.

113. Did you take it in your hand?

Ans. I did not.

114. Neither your interest nor curiosity at that time induced you to seek to know the cause of the divorce?

Ans. Neither.

115. Will you please append that slip of paper as part of your deposition?

Ans. I append it hereto, pasted on this paper, below, which is as follows:

Courier Journal.

SATURDAY MORNING, *June 16th*, '77.

The Courts—The Chancery Court.

After many years of marriage Mary J. Harvison entered
327 suit yesterday for divorce from her husband, William G. Harvison. They were married March 2d, 1848, in Pennsylvania, and moved to this city in 1869. She alleges drunkenness, a wasting of his estate, and failure to provide for his family, besides brutal treatment. They have some household property, an insurance policy of $1,000.00, and a promissory note due defendant. She prays for alimony for herself and the support of five children; that the defendant be ordered to produce the insurance policy, and that she be decreed the property belonging to them, or so much as equitable, and that she have the custody of five children.

116. Didn't Dr. Cook tell you some time during the year of 1877 that he had seen Mr. Harvison drunk, and ask you if his drinking would not vitiate the policy, and didn't you in reply tell him that it would not vitiate the policy, and that if Harvison would only drink enough to kill him it would be all the better, as it would stop the payment of premiums, or words of like purport?

Ans. Unquestionably no as to both questions.

328 117. When he left the policy with you to be surrendered, in 1877, didn't he then tell you that he had seen Harvison drunk & state that he feared his drinking habits would affect his policy, and for that reason he was not willing to carry it any longer?

Ans. When Dr. Cook left the policy with me in 1877 he stated that the premiums were becoming higher; that he was not able in his then condition to pay them; that was the only reason he gave me for the surrender, and not one word was said about Mr. Harvison's drunkenness or intemperate habits. He did state that he thought Mr. Harvison's chances for living were greater than his own.

118. Wasn't that on the same day that the premium was due in 1877?

Ans. It was on or immediately before the day. I know it was in time for the issue of a paid-up policy.

119. Didn't you on the same day that he left the policy for surrender see Mrs. Cook and tell her what he had done, and
329 advise her to see Dr. Cook at once and get him to pay the premium & keep the policy alive, as it was for her benefit?

Ans. Mrs. Cook came to my office & asked me what the Doctor

had done about the policy. I told her that he had surrendered it for a paid-up policy; that I had already written a letter inclosing the policy to the company, but had not mailed it. She asked me to hold it until she could see Dr. Cook. Some little time after she returned, and said that the Doctor had made arrangement or would make arrangement for the money to pay the premium. I did not say to her that she ought to urge the Doctor to continue the policy as it was for her benefit.

120. When did Mrs. Harvison leave Louisville after that policy was issued?

Ans. I do not know.

121. Where was he residing in December, 1877?

Ans. I do not know.

122. Were you not corresponding with him at that time?

Ans. I wrote to Mr. Harvison once or twice with a view to
330 obtain an application for $10,000.00 insurance upon his life in the Ætna Life Insurance Co. I do not now remember whether it was in Canton, Ohio, or some place in Pennsylvania from which I received a letter from him. There was no correspondence between him & me upon any other subject.

123. Do you know how long Mr. Wm. G. Harvison had been away from Louisville in December, 1877, and do you know what his condition of health was and what his habits were, and do you know whether he was temperate or intemperate in his habits?

Ans. I do not know how long Mr. Harvison had been away from Louisville in December, 1877, nor do I know what his condition of health was, nor do I know what his habits were, and I do not know whether he was temperate or intemperate in his habits.

124. Did you then know, in December, 1877, whether or not Mr. Harvison had any serious illness up to that time, or whether he had any of the diseases enumerated in your application up to that
331 time—whether he had had inflam-itory rheumatism, or had met with any serious personal injury up to that time, or whether his parents were living at that time; whether he had been acclimated to a southern climate up to that time, or whether he had had yellow fever up to that time, or had been engaged in any employment injurious to his health up to that time; whether he was then, at that time, addicted to the use of spirituous liquors or opium?

Ans. No.

125. Look at the application now shown you, marked "W. W. M. 3," and state whether or not you wrote the answers to questions in that application; and, if so, for what purpose.

Ans. I did not write them.

126. Do you say those answers are not in your handwriting?

Ans. I say that nothing in this paper is in my handwriting.

127. In whose handwriting are the answers and written part of that paper?

Ans. I do not know.

332 128. Did you ever see that paper before?

Ans. I do not remember ever to have seen this paper before. A paper, or one similar to this, was sent to me from

the office of the Phœnix Mutual Life Insurance Co. of Hartford. This may be the one, but it is certainly not in my handwriting or any part of it.

129. Was the application that you received from the office at Hartford, Conn., filled up with written answers to the questions therein when you received it from the home office?

Ans. Yes.

130. What did you do with it?

Ans. I think I sent it to Mr. Harvison for his signature and medical examination.

131. Look at the envelope now shown you marked "W. W. M., No. 4," & state whether the address thereon, "W. G. Harvison, Esq., East Liverpool, Ohio," is in your handwriting, and whether you sent the application you have spoken of to him at that place?

Ans. This envelope is directed in my handwriting. I am
333 not sure that I sent the application to him at that place.

132. When you sent the application to Mr. Harvison to be signed by him, did you inclose a letter in the same envelope to him?

Ans. I did.

133. Look at the letter now shown you marked "W. W. M., 5," and state whether that is the letter you sent with the application to Mr. Harvison.

Ans. This letter is in my handwriting and was sent with some application. I presume that is the one.

134. Have you any doubt of this being the same application you sent with the letter?

A. No; I think that is the one. I received but one from the company and I sent the one I received.

135. The company at the home office, then, without seeing Mr. Harvison, and without his being present, wrote the answers in this application to the Ætna Life Insurance Company of Hartford, Conn., as being the condition of Mr. Harvison and his and his family's history up to that time.

334 Ans. As to that I do not know. The company at that time wished to reinsure its risks exceeding $10,000.00, and several blanks to persons insured through my agency for over that amount were sent to me, filled up at the home office, for the purpose of reinsurance.

136. Didn't you in your letter request Mr. Harvison to sign that application as it was filled up at the home office in order that your company might put half the risk it carried on his life upon the Ætna Insurance Company of Hartford, Connecticut?

Ans. The letter is made part of my deposition and will show for itself. What I said is in the letter. I can't answer the question further than the letter shows, which I file as part of my deposition, marked "W. W. M., 5."

137. Will you please also file the envelope "W. W. M., 4," and the application "W. W. M., 3," also as part of your deposition?

Ans. Yes; I file them as part of my deposition.

335 138. Have you, and can you file with your deposition, the

telegram to which you referred in your direct examination and which complainant then called for?

Ans. It may be with my papers; I may be able to find it; I will look for it.

139. You have said in your examination that your company had furnished you with blank forms of assignment for life policies. Will you be kind enough to produce and file one of those blank forms as part of this deposition?

Ans. I do not think that I have any of the blanks of the company.

140. Are you sure that you had such blank form when you told Mrs. Cook you could furnish her with a blank form of assignment?

Ans. I had numbers of them during the time I was the agent of the company; may have scattering ones now, but can cite you to persons who have assignments made upon similar forms; they were printed.

141. Why didn't you, if you had printed forms, furnish
336 Dr. Goodale with one to take the assignment of Dr. Cook of that policy?

Ans. There was no earthly occasion for me to furnish Dr. Goodale with a blank form of assignment.

142. Were those blank forms similar to the one indorsed on the back of the policy in this case?

Ans. There are not; this is a receipt as well as an assignment.

143. Don't your blank forms of assignment contain a receipt for the consideration also?

Ans. My recollection is that the blank form reads "for and in consideration of one dollar;" that form of assignment refers to an assignment made to a party other than the company.

144. Does your blank form differ from the indorsed assignment on this policy otherwise than in the particular you have named? I mean as to form, not as to parties.

Ans. Yes; I think it does; there is a condition in the printed form of assignment, I think.

337 145. Can you now give the date of the telegram you sent to the home office concerning the agreement between you and Dr. Cook as to the price to be paid for the policy?

Ans. I sent no telegram, but a letter, dated February 7th, 1880.

146. How long was that before you had the interview at Dr. Cook's office with Dr. Cook & Judge Edwards?

Ans. It was the same day that I had the interview with Dr. Cook & Judge Edwards, at Judge Edwards' office. The interview at Dr. Cook's office was on Tuesday, Feb'y 10th, 1880.

147. Had you at any time before you received the application "W. W. M., 3," and before you wrote the letter of December 29th, 1877, marked "W. W. M., 5," inclosing the application to Wm. G. Harvison, informed the home office of Harvison's divorce and the cause of it?

Ans. I had not.

148. Did you inform Dr. Goodale before that time or at any time

of the divorce suit, and take him to look at the record, or
338 did he inform you of the ground of divorce & take you with him to examine the record?

Ans. I informed Dr. Goodale in 1879—not before—of the divorce, and at my suggestion we went to the clerk's office to examine the papers.

149. When you informed him in '79 that there had been a divorce, did you tell him the grounds upon which the divorce had been granted?

Ans. I did not; I didn't know the grounds until I saw the papers in the clerk's office.

150. How had you learned that there had been a divorce?

Ans. From the paper that Dr. Cook showed me some time before, but I am really not sure whether it was a divorce or a petition for divorce, and I am really not sure that I saw the judgment of the court, but I had an impression that he had been divorced. At that time Dr. Goodale was here and stated to me that the policy on the life of Mr. Harvison was the only one of $20,000.00 on the books of the company that had not been reinsured in part.

339 151. Dr. Cook had shown you that paper in 1877, had he not?

Ans. Yes.

152. Had he shown it to you after that time again?

Ans. No.

153. Did neither you -or Dr. Goodale know the cause of divorce until you examined the records in 1879? Had neither of you information upon that subject before you made the examination?

Ans. I did not, nor had not; and, so far as I know or believe, Dr. Goodale didn't.

154. Did you and Dr. Goodale go & examine the records on the same day that you informed him of the divorce?

Ans. I think it was the same day.

155. Didn't Dr. Goodale tell you that he had information of the divorce before you gave him the information?

Ans. I do not remember if he did. The whole conversation grew out of the desire of Dr. Goodale to reinsure part of the risk.

340 156. Was Dr. Goodale and the company, at the time you examined the record with him, desirous of reinsuring in some other company a part of the risk on Harvison's life, and were you and he seeking information with that view?

Ans. The company was desirous of reinsuring a part of all risks over $10,000. My recollection is that Dr. Goodale inquired of me as to Mr. Harvison's residence, and in the conversation I stated to him that my impression was that he had been divorced, and if he desired we would go to the clerk's office & see the papers. So far as I understood he was desirous of reinsuring a part of the insurance.

157. While you were negotiating with Dr. Cook for the surrender or the sale of the policy to the company, and before you visited Dr. Cook's office with Judge Edwards, didn't you call at Dr. Cook's office to see him, and finding that he was out did not you hold a conver-

sation with Mrs. Cook, who stood at the head of the stairs while you were standing in the hall, about Dr. Cook giving up the
341 policy to the company?

Ans. Yes.

158. Didn't you on that occasion learn from her that the policy belonged to her, and that she was opposed to its being given up, and didn't you reply to her that she had better take a half-loaf than none?

Ans. I did not learn from her that the policy belonged to her. She expressed an unwillingness for the Doctor to take the amount that had been suggested. I did not state that she had better take a half-loaf than none.

159. Did not Mrs. Cook in that conversation say to you that you knew the policy had been taken out for her benefit, and assigned to her by your direction or dictation, and that she thought it was very strange that you should now advise Dr. Cook to give it up, or words to that purport?

Ans. Neither at that time nor at any time previous to Mr. Harvison's death did Mrs. Cook ever inform me that the policy
342 had been assigned to her, nor had I the least intimation of any assignment, and no conversation or words to that effect took place at that time.

160. In that same conversation did not Mrs. Cook inform you that Johnnie, her little nephew, had been quite sick and at the point of death, and you said you sympathised with her because you had had sickness in your own family?

Ans. I do not remember that, as I do remember the conversation lasted a very little while; I was standing in the hall—the door open—and Mrs. Cook was standing at the top of the stairs in the second story.

161. Can you now repeat the conversation and all that was said by you and her at that interview?

Ans. No, I cannot.

162. Will you say that in that interview Mrs. Cook did not tell you of the sickness of Johnnie?

Ans. No, I cannot say that she did not; I do not remember it.

163. While you and Dr. Cook & Judge Edwards were hold-
343 ing the interview in Dr. Cook's office, when you say Dr. Cook only asked to postpone the conclusion of the arrangement until the next day, Wednesday,—that is to say, on Tuesday, February 10, 1880,—did Mrs. Cook and Miss Roberts come into the office?

Ans. I think they did, just before we left.

164. Did Mrs. Cook say anything at all at that time about the policy, about its surrender, or express her disapprobation in any way? If so, state what she said.

Ans. Mrs. Cook opposed the sale of the policy at the figures named; I do not remember anything further that she said; Dr. Cook then said that he had until Wednesday, the time fixed on the previous Saturday; he wanted to get a reply to a letter he had written to Ohio in reference to Mr. Harvison; I do not remember that Mrs. Cook said anything else.

165. You say Mrs. Cook opposed the sale at the price named; please give the words used by her to express her opposition to the sale.

344 Ans. I cannot give the words; I can give the words of a subsequent conversation.

166. Give me the words of that subsequent conversation, and state when and where it was and who was present.

Ans. It was on the steps of the Hamilton building, on the corner of 6th & Main, on the Main-street side. Dr. Cook had come to meet an appointment made in reference to this pending negotiation, and he and I had commenced the conversation about it when Mrs. Cook came up the steps into our presence and said that if the Doctor took less that $3,000.00 for that policy he need never call her his wife. That was the end of that interview. It was some days after the 10th of February. I think there was no one present that heard the conversation except us three. Mr. Chas. R. Long was immediately to our right, but I do not know that he heard that conversation.

167. Didn't Dr. Cook at that conversation say that he had
345 come to tell you that he would not give up the policy; that it belonged to Mrs. Cook, and she was unwilling to have it given up?

Ans. He did not; he said he would see me again.

168. Is that all he said at that interview?

Ans. That is all he said after Mrs. Cook came into our presence.

169. Didn't Mrs. Cook say to you in that interview that it was not worth while for you to pretend that the policy was vitiated on account of Harvison's habit of drinking, as you associated with him and knew all about his habits all the time, and that she regarded you unprincipled in trying to beat her out of her policy, or words of like effect?

Ans. No; Mrs. Cook never said in my hearing that I was unprincipled. She did say from the second story, as referred to in the former question and answer, that I knew that Mr. Harvison was in the habit of drinking.

170. Why is it you can remember what Mr. Cook said at
346 the interviews before and after the 10th of February, 1880, and you can't remember anything she said at the interview on the 10th of February, 1880, when Judge Edwards was present?

Ans. What I have stated I do remember; why I cannot remember anything else I do not know. I do know that I am not concealing anything that I heard.

171. On the evening or on the day that Dr. Goodale told you he had procured the policy from Dr. Cook didn't Dr. Goodale ask you if you did not think he had made a good bargain in buying the policy for $4,000.00, and didn't you reply to him that you thought he had if he had bought it for that price?

Ans. I don't remember any such conversation. The day before or the Sunday Dr. Goodale asked me if I were he would I recommend the company to give $4,000.00 for the policy, and I said yes.

172. Didn't you repeat to Mrs. Cook and Miss Roberts the conversation inquired about in question 171 on a subsequent rainy

347 day at the office of Dr. Cook, when Mrs. Cook furnished you with an umbrella, and did not you in that same conversation say that Goodale was foolish, or some such word, not to have gotten her signature to the assignment and receipt, and that she ought to recover, & you hoped she would recover, the full amount of the policy from the company?

Ans. I did not repeat the conversation inquired about in 171. I have no recollection of any such conversation. I think I would remember it if it had occurred.

173. Were you at Dr. Cook's office on such a day at the time she furnished you with an umbrella, and did you see Mrs. Cook and Miss Roberts there?

Ans. Yes.

174. What did you converse about on that occasion?

Ans. I do not remember any particular points of conversation.

175. As you and Dr. Goodale had both learned through the record that Mr. Harvison had been divorced because of the habit
348 of drunkenness, which under the terms of the policy would vitiate it, why did you consider it a good bargain for the company to buy it at $4,0000.00?

Ans. I have not said that I considered it a good bargain for the company to buy it at $4,000.00.

176. Why did you tell Dr. Goodale if you were he you would advise the company to give $4,000.00 for the policy after possessing yourself of that knowledge?

Ans. It was really because I thought Dr. Cook had paid out so much money that it would be fair between the parties to pay that amount.

177. Wasn't it a part of your duty, as general agent for this foreign insurance company for the State of Kentucky, to keep surveillance over those persons upon whose lives you had taken risks in Kentucky, and to report to the company any change in the habits or condition of the insured which increased or might increase the risk or vitiate the policy?

Ans. No, sir.

Cross-examination closed.

349 Redirect examination of same witness on behalf of defendant company:

Redi. Intg. 1. Examine the memoranda now shown you purporting to be memoranda of the Harvison divorce case and state whether they are the memoranda made when you and Goodale examined the papers in the case, and who put your name on those papers, and when.

Ans. They are. I attested them in 1879; it was in the fall of 1879. I file them as part of my deposition, marked "W. W. M., 7."

2. Did Mrs. Cook, in the interview when she was at the head of the stairs and said that she was unwilling for the Doctor to take the amount suggested, say what amount she would be willing for him to take; if so, what did she say?

Ans. No, she mentioned no amount.

3. Did the company, or Goodale, or you, try to reinsure Harvison, so far as you know, after learning what the divorce record showed as to his habits?

Ans. No.

5. Are you positive in your recollection that you mentioned
350 Harvison's divorce to Goodale before she mentioned it to you, or that Goodale did not know the cause of divorce from Mrs. Harvison before he examined the records, so far as you know?

Ans. It is my impression that I mentioned the divorce to Dr. Goodale before he mentioned it to me, and it is further my impression that he did not mention to me any knowledge of Harvison's habits or any interview with Mrs. Harvison until after we examined the records.

6. Did he then tell you when his interview with Mrs. Harvison was with reference to the time you examined the record; if so, what?

Ans. I think he told me while we were in the court-house, or when we were coming from the court-house after examining the record.

7. What power had you to decide whose name should appear in policies or applications as beneficiary, or in policy "P P P" or application "Q Q Q" in this suit?

Ans. None.

8. Who decided whose name should appear as beneficiary
351 in application "Q Q Q" and policy "P P P?"

Ans. The applicant elects the beneficiary and the company makes the decision. What I mean to say is that the company would decide whether the applicant had an insurable interest in the life of the person proposed to be insured. The agent has no authority. Dr. Cook decided whose name should appear as beneficiary in said application & policy.

9. I read to you X question 50 and answer. State whether or not there was in all or any of the conversation you had with Dr. Cook before Harvison's death any intimation or expression which gave you any reason to believe or made you believe that Dr. Cook had assigned, or intended or desired to assign, the policy sued on to Mrs. Cook, or intended it or any interest in it for her benefit, or expressed any wish that complainant should have the benefit of all or any of his estate, except what he said as to a policy on his own life? If so, state everything of the kind you ever heard from Dr. Cook before this suit began.

X question 50 & answer here read to witness.

352 Ans. No; Dr. Cook never made any statement other than I have said in the previous examination.

10. Who was it did all the talking about getting Dr. Cook to assign this policy to complainant?

Ans. Mrs. Cook did all the talking to me.

11. Give the character of that talking and her conduct in reference to procuring an assignment of the policy as to frequency, and

also whether she was in the habit of talking to you about getting that assignment in Dr. Cook's presence?

Ans. Mrs. Cook quite frequently asked me to use my influence and endeavor to get the Doctor to assign the policy to her and manifested quite an anxiety that the assignment should be made, and this was for some length of time after the issue of the policy. She was not in the habit of talking to me in Dr. Cook's presence about the assignment.

12. State whether or not such conversations about the assignment of said policy began before or continued after the 19th of Sep-
353 tember, 1872, to the best of your recollection, the policy being dated August 27th, 1872, and countersigned August 31st, 1872.

Ans. They continued after the 19th of September, 1872, to — best of my recollection; indeed I have no doubt of it.

13. How long after, as near as you can remember?

Ans. I should think it covered several months, or a year or more.

14. State whether or not the questions and agreements printed in the application "Q Q Q" were known to or read to or by Dr. Cook and Wm. G. Harvison, or either, before it was signed. State in what respect, if any, the printed blank for that application differed from those which Dr. Cook had been in the habit of reading as medical examiner for defendant.

Ans. The questions were read. I do not know that the agreement commencing at "It is hereby declared" was read by either. The questions were read by me and answered by both. The blanks were the same up to that time.

354 15. What was the occasion of your answer to Mrs. Cook as stated in answer to cross-question 81, in which you suggested a lawyer and suit for the whole amount of the policy?

Ans. I think I have answered that question very fully.

16. State whether or not you said these things to complainant because of any knowledge on your part of any claim or right of complainant to this policy. I refer only to knowledge you had before Harvison's death.

Ans. I did not.

17. In your answer to cross-question 73 you say, "I do not pretend to say that Mrs. Cook did not at some time say that the policy was to be taken out for her benefit." Did Mrs. Cook talk to you about this policy before it was taken out?

Ans. She did not.

18. Can you remember any time when Mrs. Cook said the policy was to be taken out for her benefit; if yea, when was it?

Ans. I do not remember any time, but it was certainly not
355 before the issue of the policy.

19. Please state what she said, if anything, and when and where, about this policy being taken out for her benefit.

Ans. At the office of Dr. Cook, Mrs. Cook frequently stated, as I always understood it, that the proceeds of the policy or the benefit of the policy in the event of Mrs. Harvison's death was to be hers; but I never understood from her that any assignment of the policy

had been made, nor from anything she said to me previous to the death of Mr. Harvison that anything had been done that made the policy hers. The statements were always with reference to the furture.

20. In what way or by whose act or purpose or plan was it that she gave you to understand that the proceeds of the policy were to be hers—that is, how did she claim that she was to have it? What was the nature of the claim. State fully.

Ans. I don't understand the question.

21. Did she state whether the plan for her to have the pro-
356 ceeds of the policy was a plan of Dr. Cook's or hers. What did she say to indicate which of them had the purpose or plan for securing the proceeds of the policy to her?

Ans. I don't think she stated about any plan. My impression was, and is, from her statements that she expected to derive the proceeds of the policy from the Doctor's act.

22. From an act done, or to be done, or expected to be done?

Ans. It was all in the future, as I understood it. Nothing had been done, as I was informed.

23. What did Mrs. Cook say in reply to you when you told her that you had blank forms of assignment?

Ans. I do not remember that she said anything, or, if so, what; that was information I was giving her.

24. I read to you cross-question and answer 57. Do you know as a fact whether Mrs. Cook, before the death of Harvison, ever called your attention to the fact that her name was not in the policy as beneficiary?

(Here question & answer read to witness.)

Ans. I do not.

357 25. Or whether before the death of Harvison she expressed to you surprise that her name did not appear in the policy, and did she call your attention to the fact that her name was not in the policy as beneficiary?

Ans. No.

26. You mean she did not?

Ans. That was what I said.

27 Please read cross-question 56 and answer (question & answer here read to witness). Did not counsel for complainant, after that question was dictated by him and put by the commissioner, ask you orally to answer whether Dr. Cook or Mrs. Cook examined the policy, using "or" instead of "and?"

Ans. I do not remember.

28. In X 40 & 41 you are asked whether you told the company that the questions in the application had been answered by Dr. Cook or Mr. Harvison? Is it true that the questions in the application had not been answered by Harvison?

Ans. The questions were read to Mr. Harvison and he
358 signed the application afterwards.

29. State whether the answers to the questions were read to

Mr. Harvison, or by him, and whether or not they were approved by him.

Ans. Yes.

30. Is your recollection clear as to who made the second medical examination of Harvison in the application for this policy?

Ans. No; it is not clear.

31. Who made such examinations for defendant besides Dr. Cook?

Ans. Dr. Cook examined most of the applications. There were also examinations made by Dr. Satterwhite, Dr. Leachman, Dr. Garvin, Dr. Humphreys, Dr. Octerloney, and others.

32. Do you remember now, after your attention has been called to it, whether it was Dr. Leachman who made the second examination of Harvison?

Ans. My recollection, as I said before, is not clear.

33. When X questions 2, 3, 4, 5, 6, 7, 8, & 9 were asked did not counsel for——

Here witness asked to say it may have been Dr. Humph-
359 ries, but of that I am not sure.

Complainant retain- the application, & request you to answer without the application.

Counsel for complainant here states the fact that he did retain the application in his hand to test the witness' memory.

34. Was there any other reason known to you for the effort to reinsure part of the Harvison policy than the desire to reduce all risks above $10,000.00 to that sum?

Ans. None.

Redirect examination closed.

Recross-examination of same witness commenced:

Re-X Int. 1. Was not the taking out of the policy sued on discussed between you, Dr., & Mrs. Cook for some time before it was done?

Ans. It was discussed between Dr. Cook and myself. I do not think Mrs. Cook had any part in the discussion.

2. Didn't Mrs. Cook then assert and claim that the policy was to be taken out for her benefit?

360 Ans. Not in my presence nor to me.

3. You have said that you explained to Mrs. Cook why her name could not appear in the policy, it being a creditor's policy. Why did you make that explanation to her if she did not claim that the policy was to have been taken out for her benefit?

Ans. You have put in the question what I do not remember to have said. I explained to her that she had no insurable interest, and it was in answer to a question why I did not have the name inserted, as if I had authority in the matter.

4. Did she at that time assert or claim that the policy was to have been taken out for her benefit?

Ans. If she did I do not remember it.

5. Did she make complaint that her name did not appear in the policy as beneficiary?

Ans. No; I think not.

6. Why, then, did you explain to her why her name could not appear in it as beneficiary?

Ans. I have already stated it was in answer to the ques-
361 tion, not as a complaint, that her name did not appear. My recollection is that Mrs. Cook thought I had authority in the matter and that I could have had her name inserted.

7. About how long, how many weeks or months, was the taking out of this policy discussed between you & Dr. Cook before the policy issued?

Ans. There were a few conversations about it, and I think all within less than a month.

8. Are you positively certain that complainant solicited you to get Dr. Cook to assign the policy to her after the 19th of September, 1872?

Ans. I am.

9. From what fact or circumstance do you fix the time in your mind?

Ans. From the frequent and persistent solicitations on the part of Mrs. Cook, which ran through several months, but not from any special facts or circumstances.

10. Can you fix the time & place where she last solicited you upon that subject after September 19th, 1872?

362 Ans. I cannot fix the time; the place was at the office of Dr. Cook.

11. Who was present on that last occasion when she solicited you, besides you and her?

Ans. No one.

12. You have said that complainant frequently solicited you on this subject in Dr. Cook's office. Was Dr. Cook never present on any such occasion?

Ans. I think not.

13. How many times do you mean by the word "frequently?"

Ans. I can't state definitely how many times.

14. Do you mean more or less than five times, or ten times, or twenty times?

Ans. Judging from the persistency I should think it was more than twenty times.

15. How many times a day did you visit Dr. Cook's office about that time?

Ans. I rec-on I was at the office nearly every day, not often more than once a day.

16. Did she so solicit you every time you so went to the office of Dr. Cook?

Ans. No; I did not always see Mrs. Cook when I went to his office.

363 17. Did Dr. Cook and Mr. Harvison both make individual answers to each of the questions in the application marked "Q Q Q.?"

Ans. The answers were made by Dr. Cook, the application was signed by him, and the questions & answers were afterwards read to Mr. Harvison and application signed by him.

18. Did you require that both of them should individually answer each of the questions in the application?

Ans. I don't think Dr. Cook answered the question in regard to the amount of insurance existing upon the life of Mr. Harvison; he answered the others & Mr. Harvison assented to all.

19. If you accepted and wrote down Dr. Cook's answers to the other questions, why did you require Mr. Harvison to answer them also?

Ans. I thought it necessary for both of them to subscribe to the answers; they were both parties to the policy; that was always customary.

20. Do you mean by that to say that you thought it necessary for both to make individual answers to the questions?

364 Ans. Yes, to make the answers or assent to them.

21. Did you require Dr. Cook's signature to that application as answering the questions therein?

Ans. Yes.

22. At the time you obtained Dr. Cook's signature to that application did you not explain to him that it was necessary for him to sign as beneficiary and not as answering the questions therein?

Ans. No, there was no such explanation, and no hesitation on the part of Dr. Cook to sign the application.

23. Look at the two exhibits filed by you on your direct examination, marked "W. W. M., 6," & "W. W. M., 7," and state in whose handwriting they are.

Ans. Dr. Goodale's, but I attested them & signed my signature to them.

24. Who wrote on the paper "W. W. M., 7," over the signature of A. W. Goodale, the date October 19th, 1877?

Ans. Dr. Goodale.

Recross-examination closed.

Second redirect examination:

365 2 Redi. Int. 1. Did or not you or Dr. Goodale, so far as you know, examine the divorce suit of Harvison *vs.* Harvison on the said date, October 19th, 1877, or the year 1877, or at any time before the time to which you have testified above?

Ans. No.

2. Was or not that date "October 19th, 1877," put on that paper to show the date upon which that memorandum was made?

Ans. No.

Second redirect closed.

Second recross-examination:

1. Do you mean to be understood to say that you know that Dr. Goodale did not examine that record in 1877?

Ans. This paper was presented to me by Dr. Goodale at the time of the examination, in the fall of 1879, and was there attested by

me. I do not know that Dr. Goodale ever made any previous examination. I don't believe he did.

[2.] ——.

Ans. So far as his statement to me, it was new matter to him when we went to the court-house.

366 3. If you had not examined that record before 1879, and Dr. Goodale had not examined that record prior to October 19th, 1877, how did your company at the home office know that W. G. Harvison was not a married man on the 29th of December, 1877?

Ans. I do not know.

Second cross-examination closed.

Third redirect examination:

1. State whether or not those memoranda of the divorce suit marked "W. W. M., 6," & "W. W. M., 7," were made in your presence or at the time Dr. Goodale & you were examining the record in 1879.

Ans. They were.

2. State whether or not Goodale was ever here, so far as you know, in 1877.

Ans. I don't remember.

W. W. MORRIS.

Exhibit "W. W. M., 2," referred to in the deposition of W. W. Morris, is as follows:

EXHIBIT "W. W. M., 2."

LOUISVILLE, KY., *March* 13, 1880.

W. W. Morris, general agt. Phœnix Mutual Life Ins. Co.

367 DEAR SIR: I decline to accept the company's proposition.

Yours truly, A. B. COOK.

Exhibit "W. W. M., 3," referred to in the deposition of W. W. Morris, is as follows:

EXHIBIT "W. W. M., 3."

Ætna Life Insurance Co. of Hartford, Conn.

I, William G. Harvison, of Louisville, county of Jefferson, State of Kentucky, being desirous of effecting an assurance with the Ætna Life Insurance Company in the sum of —— dollars upon *my* life of ——, of ——, county of ——, State of ——, during the renewable term of ten years, do hereby declare and warrant that my age next birthday will be fifty-eight years; that I am now in good health, of sound body and mind, and do usually enjoy good health, and that the following answers and statements are correct and true, in which I have not concealed, withheld, or misrepresented any material circumstances in relation to the past or present state of my

368 health, habits of life, or condition which may render an assurance on my life more than usually hazardous, or with which the directors of said company ought to be made acquainted.

And I, J. M. Holcombe, sec'y, do hereby declare that the Phœnix Mutual Life Insurance Company has an interest in the life of the said William G. Harvison to the full amount of the said sum of —— dollars.

And we do hereby agree and warrant that the answers given to the following questions and the accompanying statements are true, and this declaration shall be the basis and form part of the contract or policy between us and the said company, and that if the same be in any respect false or fraudulent the said policy shall be void, and all moneys which may have been paid on account thereof shall be forfeited to said company.

And we further agree the assurance hereby proposed shall not be binding on said company until the amount of premium, as stated therein, shall be received by said company, or an accredited
369 agent thereof, in the lifetime of the said William G. Harvison, and a receipt given therefor signed by the president or secretary of the company.

Dated at —— this — day of ——, 18—.

(Signed) —— ——.

Questions and Answers Above Referred to.

1. What is the name, residence, and occupation of the party whose life is proposed to be insured? Give Christian name in full and plainly written.

William G. Harvison; Louisville, Ky.; merchant.

2. What is the name, residence, and relationship of the person for whose benefit the assurance is proposed?

A. B. Cook; Louisville, Ky.; bro.-in-law & creditor.

3. What is the place and date of birth of the party whose life is to be insured? Be very particular to answer correctly.

Place, Ireland; y'r, 1820; mo., Feb'y; day, 27.

4. What is the age next birthday? Be particular to answer correctly.

Fifty-eight.

370 5. Is the party whose life is to be assured married? No. Are the habits of the party sober and temperate? Yes.

6. Has the party even been addicted to the excessive or intemperate use of any alcoholic stimulants or opium or does he use any of them often or daily? No.

7. Has the party been successfully vaccinated? Yes. Has the party had smallpox or varioloid? No.

8. Has the party been acclimated to a southern climate? No. If so, when & how? —. Has the party had the yellow fever and when? No.

9. Has the party been, or is he, employed in the army or navy? No. What employments has the party been engaged in? Teacher & merchant. Has any employment in which the party has been engaged had any injurious effect upon his health? No.

10. Has the party ever resided in southern, western, or foreign

climates; and, if so, what effect was produced on the constitution and health? In Ireland only & Kentucky; no effect.

11. Are there, or have there ever been, any signs of any
371 nervous affection or of predisposition thereto? No.

12. Has the party ever had any of the following diseases (answer yes or no opposite each): Appoplexy? No. Asthma? No. Bronchitis? No. Consumption? No. Disease of the heart? No. Dropsy? No. Epilepsy? No. Fits or convulsions of any kind? No. Fistula? No. Gout? No. Insanity? No. Liver complaint? No. Paralysis? No. Palpitation? No. Rheumatism? No. Rupture? No. Scrofula? No. Spitting of blood? No. Syphilis? No. Tumors? No. Ulcers? No. Disease of the urinary organs? No.

13. Has the party had inflam-atory rheumatism; if so, when and how often? No.

14. Is the party subject to dyspepsia, dysentery, or diarrhea? No. Has the party now, or has he had, an habitual cough? No.

15. Has the party ever met with any severe personal injury or been subjected to any severe sergical operation, or has he any material defect of eyesight or hearing? If so, state particulars. No.

16. Has the party had during the last seven years any dis-
372 ease or severe sickness? If so, state the particulars of each case and the name of the attending physician. No.

17. Have the ancestors of the party generally reached old age?

18. Has either of the parents, brothers, sisters, or other near relatives of the party been afflicted with rheumatism, insanity, or with pulmonary, scrofulous, or any hereditary disease? No.

19. Are the parents of the party living? —.

Father? Yes. Age? 87. State of his health? Good.

Mother? —. Age? —. State of her health? —.

20. Are the parents of the party dead? —.

Father? —. Age at death? —. Cause of death? —.

Mother? Yes. Age at death? 75. Cause of death? Don't know.

21. How many brothers has the party had? Two. How many are living? Two. At what ages? 39, 55. What is the state of their health respectively? Good, good. How many have died? —. At what ages? —. Of what diseases? —.

22. How many sisters? Three.

How many are living? Three.

At what ages? 53, 51, 37.

373 What is the state of their health respectively? Good, good, good.

How many have died? —.

At what ages? —.

Of what diseases did they die? —.

23. What is the name and residence of the family physician of the party, or of one whom the party has usually employed or consulted? Dr. A. B. Cook, Louisville, Ky.

24. What is the name and residence of an intimate friend? —.

25. Has any proposal or application to insure the life of the party

been made to any company or agent for which insurance has not been granted? If so, state particulars and the names of all such companies or agents. No.

26. What amounts are now insured on the life of the party and in what companies? If insured in this company state the number and amount of each and every policy? 5000; Ætna (commuted), $2,000; Conn. Mut.

27. Has any company, or the agent of any company in which the party's life has ever been insured, expressed an opinion that
374 the risk was undesirable for the company, or refused to reinstate any such insurance after it had lapsed? If so, state particulars and the names of all such companies or agents. No.

28. Has any physician expressed an unfavorable opinion upon the life of the party with reference to life insurance? If so, state particulars. No.

29. Is the party and the applicant aware that any untrue or fraudulent answers to the above queries, or any suppression of facts in regard to the health, habits, or circumstances of the party to be insured, will vitiate the policy and forfeit all payments thereon; has he carefully read the questions and answers thereto, and does he understand that all policies and agreements made by the Ætna Life Insurance Company are signed by its president or secretary, and that no other person can grant insurance or make any agreement binding upon the company? Yes.

(Signed) —— ——.

In presence of—

—— ——.

Exhibit "W. W. M., 4," referred to in the deposition of W. W. Morris, is as follows:

375 EXHIBIT "W. W. M., 4."

Envelope.

Phœnix Mutual Life Ins. Co., Hartford, Conn.; Wm. W. Morris, gen'l agent, No. 7 Hamilton building, Louisville, Ky.
Postmaster return, if not called for in ten days, to the above office.

Louisville, Dec. 29, 5 p. m., Ky.

W. G. Harvison, Esq.,
East Liverpool,
Ohio.

Exhibit "W. W. M., 5," referred to in the deposition of Wm. W. Morris, is as follows:

EXHIBIT "W. W. M., 5."

LOUISVILLE, *Dec.* 29, 1877.

W. G. Harvison, Esq., East Liverpool, Ohio.

DEAR SIR: Will you be good enough to sign the inclosed application and be examined by a good physician (whose fee I will pay), and return the same to me? Our Co. desires to reinsure its risks above a certain amount, and if you will do this I shall be obliged.

Would be glad to hear from you occasionally as a friend.

Yours truly, WM. W. MORRIS.

376 *Deposition [of] John M. Holcombe.*

JOHN M. HOLCOMBE, being duly sworn, testified:

Interrogatories to be propounded by defendant to Aaron C. Goodman, J. M. Holcombe, and A. W. Barrow, witnesses for defendant:

1. State your name, age, and residence, and your official connection with the defendant, the Phœnix Mutual Life Insurance Company of Hartford, Connecticut, how long you have held that position, and what experience you have had in connection with the business of life insurance.

2. State what experience or information you have had, if any, in regard to the different classes of risks in life insurance, and what study, if any, you have made of the different classes of life risks, according to the ages and habits of the parties.

3. Suppose that William G. Harvison, whose life was insured in defendant's policy number 66488, sued on in this case, answered
377 in his application that he "was not addicted to the habitual use of spirituous liquors," that this was untrue, and that at and about the time said application was made he was addicted to the habitual use of spirituous liquors; state what would have been the effect, if any, upon his insurability and upon the nature or hazard of the risk of insuring his life.

4. What is the proportion of deaths per annum in every one thousand persons of the age of fifty-two, the average death rate, the death rate among those of temperate habits, and the death rate, if there is any difference, among those addicted to the habitual use of spirituous liquors.

5. Suppose that said Harvison, who was represented in the application as fifty-two years old and not addicted to the habitual use of spirituous liquors, afterwards became or was addicted for one, two, or more years to the habitual use of spirituous liquors, what
378 would be the effect of becoming so addicted upon the probabilities of any man fifty-two years old living as long as he would be likely to live if he had not become so addicted?

6. State when the defendant, or any officer of the defendant, so far as you know or have information, first received or had any knowledge or information whatever that the complainant, Fannie M. Cook, had or claimed to have any right, title, claim, or interest whatever in or to said policy, or its proceeds, or to have any assignment or transfer thereof.

7. State when the defendant first had any knowledge or information whatever, so far as you know or have ever heard of or had any information, that said Harvison was, either before or after the application was made, addicted to the habitual use of spirituous liquors.

7. (To Mr. Goodman:) If you have any letter from A. B. Cook, the beneficiary in policy 66488, sued on in this action, in reference to that policy, please file it and make it part of your
379 deposition, identifying it by proper marks.

8. (To Mr. Holcombe:) How many premium notes, if any, were surrendered to A. B. Cook for the surrender of policy 66488, and how much did they amount to?

9. (To Mr. Holcombe:) State whether or not said notes or the $4,000.00 paid A. B. Cook for said policy, or any part of either, have been returned or offered to the defendant since they were surrendered and paid to said A. B. Cook.

10. State whether or not a person known to be addicted to the habitual use of spirituous liquors is or was at the time the application for said policy 66488 was accepted by the defendant insurable in defendant company or in any safely managed life insurance company.

11. (To Dr. Barrow:) State what is the effect on a person's life, probabilities of living, and power of resisting disease and throwing it off when it has come upon him of being addicted to the habitual use of spirituous liquors.

380 13. (To Mr. Holcombe:) State for what purpose William W. Morris was appointed, and what powers were given him, and whether or not he had any authority as general agent to make contracts or negotiate for the surrender of any policies issued by the defendant.

Cross-interrogatories:

1st. In the written application upon which the policy in controversy was issued did your company require, in addition to the answers to questions therein propounded to the person whose life was to be insured, the examination of the applicant by a physician or medical examiner employed by the company, and the certificate of such physician as to the physical condition of the applicant and that the applicant was a safely insurable risk, and the recommendation of such physician that the company grant the policy?

2d. Did you issue the policy sued on without such exami-
381 nation, certificate, and recommendation as *inquired* of in the foregoing interrogatory, or would you have issued the policy without that?

3d. Did you not also require your general agent for the State of Kentucky to recommend the risk before you issued the policy, and did he not so recommend Wm. G. Harvison, and would you have issued the policy No. 66488 without such recommendation?

4th. Before issuing said policy No. 66488 did you not also *enquire* the further certificate of some responsible person who was personally acquainted with W. G. Harvison that he was a person of temperate habits and had no constitutional or other infirmity cal-

culated to make an insurance on his life more than usually hazardous, and would you have issued said policy without such certificate?

5th. Does the temperate use of alcoholic drinks make the risk in life insurance extra hazardous?

6th. If, in answer to 4th direct interrogatory, you claim to
382 have knowledge as to the comparative death rate of those of temperate and intemperate habits, of using alcoholic drinks, please state the sources of your information, and if from the tabulated statement of any recognized authority please append such statement to your answer hereto, and if from the records of your company please append tabulated statement of such record.

7. If, in answer to 5th direct interrogatory, you claim to have knowledge please state the sources of your information. If you merely render your opinion please state facts within your knowledge upon which you base it; and if you say such habits would effectuate disease, please state what disease and what organs would be attacked and suffer; and you will please state whether or not such organs would continue to suffer after the habit which caused the suffering had ceased, and what evidence an autopsy after death would develope of such damaged organ.

8. If you have the letter inquired of in the 7th direct in-
383 terrogatory you will please attach to this answer a copy of the reply of the secretary or company to said letter.

9th. If you received a letter from Dr. A. B. Cook dated October 15th, 1879, about the policy sued on, please state the fact and attach said letter and your reply to your answer hereto as part thereof.

10th. Had you not received information of W. J. Harvison's sickness before you directed your agent to procure an assignment or surrender of the policy No. 66488? When & from whom did you receive such information, and, if by letter or telegram, please append the same to your answer?

11th. Did you not direct your agent, Dr. Goodale, to increase your offer in money for the purchase of said policy upon the reception of information by letter or telegram that said Harvison was likely to die or was approaching his end? If so, please append said telegram or letter to your answer hereto.

384 12. From whom, when, and how did you first receive information that said Harvison was drinking? If by letter or telegram please file the same with your answer.

13. State whether or not in December, 1877, you directed your general agent, W. W. Morris, to procure the signature of said Wm. G. Harvison to an application for the purpose of reinsuring a part of said risk on policy No. 66488 in the Ætna Life Insurance Co. of Hartford, Conn., or in some other Co., and state whether or not at that time you had any information as to the habits or condition of said Harvison. You will please append to your answer hereto copies of your correspondence with your said general agent on that subject and his letters to you on said subject.

14. Have either of you conferred with the other, or others, about this case, or the substance of the testimony you have given in the

case, or were either of you present when the other gave answers to the foregoing interrogatories & cross-interrogatories?

385 15. How many shares of stock and what interest in the company belongs to each of you and to Dr. Goodale?

16. State what amount of advantage in money, either as percentage or commission or profit, was covered by Dr. Goodale in effecting the assignment of the policy sued on to the company?

17. If the assignment should turn out to be nugatory or invalid, and Mrs. Cook, the complainant, shall recover the amount of her claim against the Co., would the Co. look to Dr. Goodale to make good to it the amount paid to Dr. A. B. Cook, through his negotiation, in case the said $4,000 cannot be recovered from Dr. Cook?

Witness, in answer to first interrogatory, says: John M. Holcombe; 33 years; Hartford, Connecticut; secretary since June, 1875. For about a year prior to the last-mentioned date I was the assistant secretary of the same company. For about three years next preceding

386 I was actuary of the insurance department of the State of Connecticut, and for the two years before that I was a clerk in the office of the actuary of the Connecticut Mutual Life Insurance Company of Hartford, Connecticut.

Witness, in reply to the second interrogatory, says:

The positions which I have held have made it necessary for me to investigate and study the question of mortality both among insured lives and in the general population; that is, the rate of mortality and the effect which climate, temperate or intemperate habits, &c., have upon the death rate.

Witness, in answer to third interrogatory, says:

If he had been so addicted he would have been uninsurable, for the risk of insuring his life would have been very much increased.

Witness, in answer to fourth interrogatory, says:

In the mortality *tabula* most generally used by life insurance companies the yearly death rate per thousand at age [of] 52 is

387 about 18. Among those addicted to the use of spirituous liquors the death rate is higher in proportion to the amount of liquor used. I am not able to give the statistics, if there are any, bearing upon this point, because life insurance companies do not knowingly issue policies on the lives of such persons, and do not, therefore, have the data from which to compile such statistics.

Witness, in answer to fifth interrogatory, says:

If Harvison had afterwards become addicted to the habitual use of spirituous liquors, having been temperate at the date of the application, the risk on his life would have increased and his expectation of life would have been diminished, and his chances of dying would have been increased in proportion to the amount of liquor used and the duration of intemperate habits.

Witness, in answer to the sixth interrogatory, says:

The first information that came to the company that any per-

388 son other than A. B. Cook ever had any interest in this policy, or claimed to have any interest, was conveyed in a letter to this company, signed by M. Mundy and dated September 1st, 1880.

Witness, in answer to the seventh interrogatory, says:

The first knowledge or information which this company ever had that Harvison was addicted to the habitual use of spirituous liquors at the date of the application, or before or after that date, was contained in a letter to this company from A. W. Goodale, dated at Louisville, Kentucky, November 25th, 1879.

Witness, in answer to the eighth interrogatory, says:

There were seven such notes, and they amounted to $2,660.

Witness, in answer to the ninth interrogatory, says:

Neither sum, or any part thereof, has been returned or offered to the defendant since the surrender.

Witness, in answer to the tenth interrogatory, says:

389 Such a person is not now and was not at any time insurable in this company or any other safely-managed life insurance company.

Witness, in answer to the thirteenth interrogatory, says:

William W. Morris was appointed general agent of this company for the State of Kentucky for the purpose of soliciting, procuring, and forwarding to the home office application for life insurance, to deliver policies issued by the company on acceptable application upon payment of premiums thereon, to receive and transmit to the company cash and notes received by him in payment of premiums *in payment of premiums* in cases where official policies and renewal receipts were sent to him for collection, and to appoint sub-agents in the State of Kentucky, with like powers, and none other, unless expressly given in each case. Said Morris had no authority as general agent to contract or negotiate for the surrender of any policy issued by the company unless authorized to do so.

390 Cross-examination of JOHN M. HOLCOMBE:

Witness, in answer to the first cross-interrogatory, says:

Such examinations were required by the company.

Witness, in answer to the second cross-interrogatory, says:

The policy was not issued and would not have been without such certificate, which, in connection with the statement of the applicant, were necessary to show the condition of the person whose life was proposed for insurance.

Witness, in answer to the third cross-interrogatory, says:

He did not recommend, but the policy would probably have been issued if this recommendation had not accompanied it.

Witness, in answer to the fourth cross-interrogatory, says:

A blank for such certificate accompanies the application, but it might not have been required to be filled up unless in the
391 body of the application there had been some doubt expressed as to the habits of the applicant. In this case his temperate habits were certified to without qualification and the friend's certificate might not have been required.

Witness, in answer to the fifth cross-interrogatory, says:

Any use of intoxicating drinks decreases the chances of life of any healthy person.

Witness, in answer to the sixth cross-interrogatory, says:

I cannot make a definite statement as to such comparative death rate as I have already explained.

Witness, in answer to the seventh cross-interrogatory, says:

My knowledge of the effect of liquor upon health is derived from observation and study of the causes of death both in this company and in the general population. In the experience of this company I have noticed that we frequently have deaths among policy holders which are caused directly by the use of liquor and others
392 where liquor is the indirect cause of death. The diseases which are caused by the organs which suffer thereby differ in different individuals. Such use tends to break down the constitution and naturally attacks the weakest spot in the case of any particular person. If the use of liquor were discontinued the organs affected might become apparently healthy, but the constitution would remain weakened and impaired. What evidence an autopsy would show I do not know.

Witness, in answer to the eighth cross-interrogatory, says:

Mr. A. C. Goodman will probably attach it to his deposition.

Witness, in answer to the ninth cross-interrogatory, says:

The letter referred to and the answer thereto will probably be attached to Mr. A. C. Goodman's deposition.

Witness, in answer to the tenth cross-interrogatory, says:

We did receive information of Harvison's sickness before we directed our agent to procure surrender of policy 66488 on
393 the terms offered by A. B. Cook, the beneficiary. The telegram containing this information is appended to this deposition and marked "Exhibit A," and is as follows:

EXHIBIT A.

Dated at Louisville, Ky., —— 13, 1880.
Received at —— June 14.

To J. A. M. Holcombe, sec'y Phœnix Life Ins Co.:

Harvison here in hospital, sick with dropsy; has not been able to lay down in four weeks; probably last sickness. The least Cook would take Saturday was four thousand. If you have anything to say telegraph M. Mundy forenoon.

A. W. GOODALE.

Witness, in answer to the eleventh cross-interrogatory, says:

Upon the receipt of the information contained in the telegram attached to my previous answer and marked Exhibit A we authorized our agent to accept the offer made by A. B. Cook, the owner of the policy. A copy of our telegram authorizing such purchase is hereto attached and marked "Exhibit B," and is as follows:

EXHIBIT B.

HARTFORD, CONN, *June 14th*, 1880.

394 To Dr. A. W. Goodale, Galt House, Louisville, Ky.:

Settle Harvison as you suggest or better if possible.

J. M. H.

Witness, in answer to the twelfth cross-interrogatory, says:

The first information of this character which came to this company was contained in a letter dated at Louisville, Kentucky, November 25th, 1879, from A. W. Goodale. This letter and a copy of my reply thereto is hereto attached and marked "Exhibit C," and is as follows:

EXHIBIT C.

NOVEMBER 25th, 1879.

J. M. Holcombe, sec'y.

DEAR SIR: I spent yesterday investigating the W. G. Harvison matter—20,000 in favor of Dr. A. B. Cook. I saw Dr. Cook, and—said he had paid the premium due in August past by cash & part in note, and Morris says he has reported it to the company. Cook desired to reduce it to ten thousand, providing he could get rid
395 of all the premium notes in hands of Co. He did not know where Harvison is at present, but thinks he is in either Penn. or Ohio. I asked him where his wife and family was, and he told me where they lived. I called on Mrs. Harvison, and she did not know where he was, but the last she heard of him he was in Warren, Ohio; had been in Meadville, Pa. He is traveling, selling something. I concluded she did not know much about him, as he left this city over two years ago, and she had a divorce from him; got it by reason of intemperate habits & abuse of family. She says he was intemperate in the year 1872, and longer than that, and grew worse until in 1877. She sued him for divorce and obtained a judgment. I asked her if he had tremens. She said he was often so bad a doctor was called to quiet him; that in 1872 he was in the habit of getting intoxicated oftener than once a month, and in 1876 & 1877 he was intoxicated nearly every day. I then hunted up the court where she obtained her divorce
396 & copied from her petition—the court under oath, & copied also extracts from affidavits of witnesses brought by her, her bro., Dr. Geo. J. Cook, her son, Jno. A. Harvison, & daugh., Mary A. Harvison. I only copied from them what related to drinking habits. I enclose you the copies. I am going this morning to see a brother of Harvison's partner, when he failed in business in 1872. The partner's name is John Baird, and lives in New York city, and I hope to find out by his bro., David Baird, in this city, just where in New York his bro. John lives, as I think he must know something about his (Harvison's) habits in 1872. I am going to see also this morning a son of Harvison's, and he may help me to find his father, as I hear he corresponds with him. I do not know as Morris can be depended upon to do it, but if he will he can lapse this policy next August. At any rate I do not think the Co. under the circumstances are under obligation to renew it, and think the re-
397 newal should be withheld. Now if, under the circumstances, you still desire to give him (Dr. Cook) anything to get the policy up, write me here, please, and with these facts of his intemperate habits I will see what can be done. If you desire it closed out by paying anything it will be best to forward me the original application. My plan, however, would be not to say a word to Dr.

Cook about this drinking, or about the policy, but keep quiet and allow it to lapse, and then it will be ended, and our excuse for not notifying him of payment will be that the policy was considered forfeited by reason of misrepresentations of habits in app. and the subsequent habits of the insured, the knowledge of which comes to the Co. during the year 1879.

I write in haste, as I am to start this morning for the southwest part of the State investigating in Hart, Graves, Todd, McCracken, Henderson, Daviess, &c., counties, and shall be on this trip a week or more. I don't know but it will take even longer than I now
398 expect. You may write me here as usual, though if anything important comes up that you want to reach me write or tel., care John Young Brown, Henderson, Ky., as I shall go there on this trip. I think yesterday a good day's work in the Harvison case. I will write you, Rufer, when I find more definite facts.

Yours in great haste, A. W. GOODALE.

John Baird, Mr. Harvison's old partner in 1872, is in New York city, c. o. Lausson Bros., 367 Broadway, N. Y.

EXHIBIT C.

(*Reply.*)

HARTFORD, CONN., *December 1st*, 1879.

Dr. A. W. Goodale, Galt House, Louisville, Ky.

DEAR SIR: Yours of the 25th was received in due course of mail. I confess that I was somewhat surprised to learn of the condition of Mr. Harvison. Several times during the past two or three years have I endeavored to get a portion of this policy reinsured,
399 but have always been assured that the man was in robust health. We wish that you would try to purchase the policy at this time.

We will pay for its surrender $718.71 cash, and return the notes, which amount to $2,456, in all $3,174.71, and in addition to this we will return the premium paid the present year. We should like to have the matter ended now in this way. We do not feel satisfied to let it remain until next August, but would like to have you see what, if anything, can be done. If it became a claim we should certainly resist it to the very last, and it looks to me as if we should do [so] successfully. I have taken a considerable interest in this policy for some years and shall be anxious to know what the result of your *negitions* are.

We enclose herewith a certified copy of the application for this policy, No. 66488, which we think will answer your purposes, as we do not quite like to send the original. I enclose herewith letter recently received for you from Nevada, Mo.

Yours truly, J. M. HOLCOMBE, *Sec'y*,

400 Witness, in answer to the thirteenth cross-interrogatory, says:

In August, 1877, we first directed Mr. Morris to procure an appli-

cation from said Harvison for a policy in the Ætna Life Insurance Company for one-half the amount of our policy on his life; that is, for $10.000. We had at this time no information whatever as to the habits or condition of said Harvison except such as was contained in the application for said policy. Our only reason for desiring to reinsure part of this risk was that we had but very few risks for that amount on our books, and did not wish to take the chances on those few. We did about that time reinsure several others in a similar condition. I append hereto copies of the correspondence and make them a part of my deposition.

Said copies are hereto annexed and marked "Exhibit D," and are as follows:

"EXHIBIT D."

HARTFORD, CONN., *Aug.* 1*st*, 1877.

W. W. Morris, Esq., Louisville, Ky.

401 DEAR SIR: If Mr. W. G. Harvison renews his policy, No. 66488, on the 27th inst., will you please have him fill out & sign the inclosed application for reinsurance in the "Ætna," & have the examination made by a physician appointed by that Co., & return to us as soon as possible thereafter, and oblige—

Yours truly, J. M. HOLCOMBE, *Sec'y.*

"EXHIBIT D."

HARTFORD, CONN., *Sept.* 22, 1876.

W. W. Morris, Esq., Louisville, Ky.

DEAR SIR: If the premium on policy No. 77918, H. V. Newcomb, is paid on Sept. 29th, will you please have the inclosed application for $10,000 reinsurance in the "Ætna" properly filled out & signed & examination made by one of that Co.'s examiners & properly returned here? We have received no reply to our letter of August 1st in regard to Harvison's policy, No. 66488. Was it renewed?

Yours truly, (Signed) J. M. HOLCOMBE, *Sec'y.*

"EXHIBIT D."

HARTFORD, CONN., *Dec.* 12*th*, 1877.

W. W. Morris, Esq., Louisville, Ky.

DEAR SIR: What is the prospect in the matter of reinsuring $10,000 on life of Harvison, No. 66488? Please reply at your earliest convenience.

Yours truly, (Signed) J. M. HOLCOMBE, *Sec'y.*

402 Witness, in answer to the fourteenth cross-interrogatory, says:

I have not conferred with either of the others, or others, about the testimony, or the substance of it, which I have given in this case, nor was any person present except the notary taking this deposition when I gave answers to the foregoing interrogatories and cross-interrogatories.

Witness, in answer to the fifteenth cross-interrogatory, says:

I own fifty-six shares of the stock, and hold two policies on my life, of the company. Dr. Goodale does not own any stock, but has one or two policies on his life.

Witness, in answer to the 16th cross-interrogatory, says:

Dr. Goodale neither earned nor received any percentage or commission or profit for purchasing and taking up this policy, his services being paid for by a stated yearly salary.

Witness, in answer to the seventeenth cross-interrogatory, says:

403 The company would not look to Dr. Goodale to make good any amount which the company may be called upon to pay in future, in addition to what it has already paid, as it considers that the transaction was complete and the surrender of the policy absolute and entire.

JOHN M. HOLCOMBE.

Deposition [of] Ashabel W. Barrows.

ASHABEL W. BARROWS, being of lawful age and first duly sworn, deposes and says:

In answer to first interrogatory says:

Ashabel W. Barrows; 65 years; Hartford, Connecticut; medical examiner and consulting physician, my duties being more particularly to examine applications forwarded by agents, and to give an opinion as to the insurability of such applicants; I have held the position for about thirty years; I have had a large experience in examining applications for insurance for this company, and also am familiar with the practices of other companies.

Witness, in answer to the second interrogatory, says:

404 I have made this matter a subject of special study both from reading and observation, and consider the life of any person of any age impaired by intemperate habits.

Witness, in answer to the third interrogatory, says:

I should have considered him an uninsurable risk.

Witness, in answer to the fourth interrogatory, says:

I do not know definitely, as I have never prepared myself tables of mortality; I have always accepted or referred to the experience of the Caliber and American experience of other tables; I know of no table showing the death rates of persons of temperate habits as distinguished from those addicted to the use of spirituous liquors, as the latter are not considered to be insurable risks.

Witness, in answer to the fifth interrogatory, says:

In my opinion it would increase the risk and tend to shorten life.

405 Witness, in answer to the sixth interrogatory, says:

I do not know.

Witness, in answer to the seventh interrogatory, says:

I do not know, nor have I been informed in any way.

Witness, in answer to the tenth interrogatory, says:

Such a person is not now nor was he at that time insurable in this company, nor, in my opinion, in any safely-managed company.

Witness, in answer to the eleventh interrogatory, says:

It would be likely to injure his constitution, render him more liable to contract disease, lessen his powers of resistance to the same, and consequently tend to shorten his life.

Cross-examination of Dr. A. W. BARROWS:

Witness, in answer to the first cross-interrogatory, says:

I believe that such an examination and certificate is always required by this company.

Witness, in answer to the second cross-interrogatory, says:

I do not know.

406 Witness, in answer to the fourth cross-interrogatory, says:

I do not know.

Witness, in answer to the fifth cross-interrogatory, says:

Not necessarily so, but it does in most cases. It depends on the temperament and constitution of the party, the amount taken, the frequency of the dose, and whether taken as a medicine in certain diseases or as a beverage.

Witness, in answer to the sixth cross-interrogatory, says:

I know of no such comparative death rates nor tabulated statements thereof.

Witness, in answer to the seventh cross-interrogatory, says:

I base my opinion upon my personal experience and observation during forty years of active practice as a physician [and] upon opinions of others recorded in medical works with which I am familiar. Any particular disease contracted by such use would depend very much upon the personal and hereditary predispo-

407 sition of the party affected. It does not necessarily follow that any specific organs should become so affected as to disclose any lesions.

Witness, in answer to the eighth cross-interrogatory, says:

I have no such letter.

Witness, in answer to the ninth cross-interrogatory, says:

I have received no such letter.

Witness, in answer to the tenth cross-interrogatory, says:

No.

Witness, in answer to the eleventh cross-interrogatory, says:

No.

Witness, in answer to the twelfth cross-interrogatory, says:

I have personally received no such information.

Witness, in answer to the thirteenth cross-interrogatory, says:

No.

Witness, in answer to the fourteenth cross-interrogatory, says:

No.

Witness, in answer to the fifteenth cross-interrogatory, says:

I have no stock, but have policies on my life to the amount of $3,000. I do not know the amount of interest of the others in the company.

408 Witness, in answer to the sixteenth cross-interrogatory, says:

I do not know.

Witness, in answer to the seventeenth cross-interrogatory, says:
I do not know, but suppose not.

A. W. BARROWS.

Deposition [of] Aaron C. Goodman.

AARON C. GOODMAN, being of lawful age and first duly affirmed, deposes and says, in answer to the first interrogatory:

Aaron C. Goodman; 60 years; Hartford, Connecticut; president of the company. I have held that position since July 1875; I was formerly general agent of the company in the city of New York, and have been a director in the company since 1862.

Witness, in answer to the second interrogatory, says;

My connection with the business of life insurance has made me acquainted with the different classes of life risks, but I have made no study as an expert of the different classes according to the ages or habits of the parties.

409 Witness, in answer to the third interrogatory, says:

Any person who is known to be addicted to the use of spirituous liquors is not insurable in this company.

Witness, in answer to the fourth interrogatory, says:

I have no knowledge and should have to refer to the tables in order to answer this question. I know of no tables distinguishing between the death rates among persons of temperate habits and of intemperate habits.

Witness, in answer to the fifth interrogatory, says:

It would tend to shorten his life.

Witness, in answer to the sixth interrogatory, says:

Neither the company, myself, -or any officer of the company had any knowledge or information whatever that the complainant, Fannie M. Cook, had or claimed to have any right, title, claim, or interest whatever in this said policy or its proceeds, or to
410 have any assignment or transfer thereof until after the death of said Harvison.

Witness, in answer to the seventh interrogatory, says:

About the last of November, 1879.

Witness, in answer to the seventh interrogatory (directed especially to him), says:

I have such a letter, which is dated October 15th, 1879, and I herewith file it and make it a part of my deposition, and which is marked "Exhibit E." Said letter is hereto attached, and is as follows, viz:

EXHIBIT E.

LOUISVILLE, KY., *Oct. 15th*, 1879.

Mr. Aaron C. Goodman, pres. Phœnix Mut'l Life Ins. Co., Hartford, Conn.

DEAR SIR: As holder of policy No. 66488, Wm. G. Harvison, for $20,000.00, I desire to know if there is not some way in which I can reduce this policy to a smaller amount, and devote the reserve value of said reduction to paying off the notes and continuing

411 the balance on the cash basis. I know it can be done in other companies, and feel confident that you can or should do as well as they do.

Most respectfully yours,

A. B. COOK, *M. D.*

152 W. Jefferson St., Louisville, Ky.

Witness, in answer to the tenth interrogatory, says:

Such a person is not now and was not then insurable in this company or in any safely-managed life insurance company.

Cross-examination of AARON C. GOODMAN:

Witness, in answer to the first cross-interrogatory, says:

A medical examination was required from some person represented to be a regular physician.

Witness, in answer to the 2d cross-interrogatory, says:

We have what purported to be a medical examination, and would not have issued the policy without.

412 Witness, in answer to the third cross-interrogatory, says:

The agent who took the application was expected to witness or sign the application, to show from whom it came; but this recommendation, if he recommended it, would not cause the company to issue a policy on an improper application. Such a recommendation from an agent would not be absolutely necessary or essential. The company has issued policies without such recommendations, but I cannot say it would have issued the policy in question without or not.

Witness, in answer to the fourth cross-interrogatory, says:

I do not know whether in this case such a certificate was given or not. Such a certificate is regarded as of great importance, and the absence of it would not be deemed essential.

Witness, in answer to the fifth cross-interrogatory, says:

In my opinion it does.

Witness, in answer to the sixth cross-interrogatory, says:

I do not claim to have such knowledge.

413 Witness, in answer to the seventh cross-interrogatory, says:

Only from my general knowledge of the experience of this company.

Witness, in answer to the eighth cross-interrogatory, says:

I do attach a copy of the answer of the secretary of this company to said letter, marked "Exhibit F," which is as follows, viz:

EXHIBIT F.

PHŒNIX LIFE INSURANCE COMPANY,
HARTFORD, CONN., *Oct. 18th*, 1870.

A. B. Cook, M. D., Louisville, Ky.

DEAR SIR: Yours of 15th inst. is at hand. We will at once write our agent in Louisville, Mr. Morris, regarding the matter to which you refer, and he will doubtless see you at once and probably make some satisfactory arrangement.

Yours truly, J. M. HOLCOMBE, *Sec'y.*

Witness, in answer to the ninth cross-interrogatory, says:

I did receive such a letter, which, with the reply of the sec-
414 retary of this company, is attached to this deposition, and which are marked Exhibits E and F, respectively.

Witness, in answer to the tenth cross-interrogatory, says:

I had not received any such information before we directed our agent to negotiate for this policy.

Witness, in answer to the eleventh cross-interrogatory, says:

We did instruct Dr. Goodale to accept Dr. Cook's offer for the surrender of the said policy.

Witness, in answer to the twelfth cross-interrogatory, says:

From Dr. Goodale about the last of November, 1879.

Witness, in answer to the thirteenth cross-interrogatory, says:

I do not remember whether there was any such correspondence or not.

Witness, in answer to the fourteenth cross-interrogatory, says:

No.

Witness, in answer to the fifteenth cross-interrogatory, says:

I have standing in my name 942 shares of the stock of this company. Dr. Goodale is not a stockholder.

415 Witness, in answer to the sixteenth cross-interrogatory, says:

Dr. Goodale is employed by the company at an annual salary, and did not earn or receive any percentage or commission or profit in effecting the purchase and surrender of the policy sued on.

Witness, in answer to the seventeenth cross-interrogatory, says:

No.

A. C. GOODMAN.

Deposition [of] Harry Cornwell.

HARRY CORNWELL, being first duly sworn, deposes and says:

Question 1. State your age, residence, and occupation, and what your occupation was from July to December, 1877.

Ans. Age, 32; Hartford, Connecticut; clerk in the office of the Phœnix Mutual Life Insurance Company; occupation from July to December 1877, was the same as at present.

Question 2. Who wrote the letter to Wm. W. Morris, a copy of which is attached to these interrogatories, and who signed "J. M. Holcombe, sec'y, to it?

416 Answer. I wrote the letter and the signature.

Question 3. Who procured the blank application mentioned in that letter, and who enclosed it to Morris?

Ans. I did.

Question 4. Make said copy of said letter part of your deposition, and state if the original is in your possession or control; if you have the letter-press copy of the original you may file it.

Answer. I here make said copy part of my deposition, and mark it "Exhibit A." The original is not in my possession, but the letter-press copy is, and I here produce it and request it be marked "Exhibit B."

Question 5. Examine the application to the Ætna Life Insurance Company, which will be shown to you by the notary, which is marked "W. W. M., 3," and make it part of your deposition, and state whether that is the same application mentioned in the said letter to Morris.

417 Answer. I have examined the application, and make it part of my deposition; I never saw it before, and it is not the application mentioned in said letter.

Question 6. State, if you know, in whose handwriting the blanks in that application are filled out.

Answer. I do not know.

Question 7. State, if you know, in whose handwriting the answer to question 5 in that application is.

Answer. I do not know.

Question 8. State whether or not said answer to question 5 in said application is in the writing of any one in defendant's office, at Hartford, Connecticut, in 1877, from July to December, if you know the writing of the clerks then in said office.

Answer. I know the writing of all the clerks then in said office, and it is not in the writing of any of them.

Question 9. State whether or not the person who filled out so much of said application as was filled out in Hartford got that paper when no blanks in it were filled, and whether or not it

418 left his possession after he filled such blanks as he did fill before it was enclosed in a sealed envelope and mailed to said Wm. W. Morris.

Answer. As I do not know who filled any of the blanks, and am positive that none of said clerks filled them, I cannot answer further.

Question 10. State whether or not you positively know that you are right in such statements as you have made in regard to the handwriting in which the blanks in said application are filled.

Answer. I do.

Question 11. State whether or not the person who filled so many of said blanks as were filled in defendant's home office knew whether Harvison was married or divorced or not, or had any former application of Harvison before him, in making out said application or such part of it as he did make out, or whether or not while so doing he knew anything about Wm. G. Harvison's age, condition,

419 habits, or relations, or what diseases he had had, or anything about the matter enquired about in the questions in said application.

Answer. None of said blanks were filled in defendant's home office so far as regards the application marked "W. W. M., 3." I did fill certain blanks in an application which is mentioned in said letter to W. W. Morris, a copy of which has been made a part of my deposition and marked Exhibits "A" & "B." In filling such blanks I went no further than to fill the blanks in what is called the declaration, at the head of said application, and down to the words "Dated at," except that I probably filled the blanks on the left-hand margin, "Amount," "Age," and "Premium," and possibly the answer to ques-

tion No. 3, as to date of birth. I probably had before me the former application of Harvison to the Phœnix Mutual Life Insurance Company. I knew nothing and had heard nothing about Harvison's condition, or whether he was married or divorced
420 or not in August, 1877, nor anything of him after the date of his application to the Phœnix Mutual Life Insurance Company.

HARRY CORNWELL.

EXHIBIT A.

"Exhibit A," referred to in the foregoing deposition of Harry Cornwell, is as follows, viz:

HARTFORD, CONN. *Aug.* 1, 1877.

W. W. Morris, Esq., Louisville, Ky.

DEAR SIR: If Mr. W. G. Harvison renews his policy, No. 66488, on the 27th inst. will you please have him fill out and sign the inclosed application for reinsurance in the "Ætna," and have the examination made by a physician appointed by that Co. and return to us as soon as possible thereafter, and oblige—

Yours truly, J. M. HOLCOMBE, *Sec'y.*

EXHIBIT B.

"Exhibit B," referred to in the foregoing deposition of Harry Cornwell, is as follows (being a letter-press copy):

HARTFORD, CONN., *Aug.* 1, 1877.

W. W. Morris, Esq., Louisville, Ky.

421 DEAR SIR: If Mr. W. G. Harvison renews his policy, No. 66488, on the 27th inst. will you please have him fill out and sign the inclosed application for reinsurance in the "Ætna," and have the examination made by a physician appointed by that Co. and return to us as soon as possible thereafter, and oblige—

Yours truly, J. M. HOLCOMBE, *Sec'y.*

DISTRICT OF KENTUCKY:

I, Sam'l B. Crail, clerk of the circuit court of the United States for the district aforesaid, at Louisville, do certify that the foregoing 421 pages, this included, contain a true and complete transcript of the record of the proceedings had in the case mentioned in the caption hereof.

Witness my hand and seal this 27th day of August, 1883.

[Seal 6th Circuit Court Ky. Dis. U. S. of America.]

SAM'L B. CRAIL, *Clerk.*

Endorsed on cover: Kentucky C. C. U. S. No. 382. Fannie M. Cook, appellant, *vs.* The Phœnix Mutual Life Insurance Company of Hartford, Connecticut. Filed 10th October, 1883.

120-87

SEP 14 1886
JAMES H. MCKENNEY,
CLERK.

Supreme Court of the United States

OCTOBER TERM, 1885.

Fannie M. Cook, — **Appellant.**
vs. No. 382.
The Phœnix Mutual Life Insurance Company, of Hartford, Connecticut, and A. B. Cook. — **Appellees.**

Appealed from the Circuit Court of the United States, for the District of Kentucky.

BRIEF FOR APPELLANT.

MARC. MUNDY,
Of Counsel for Appellant.

Supreme Court of the United States

OCTOBER TERM, 1885.

Fannie M. Cook, — **Appellant.**

vs. **No. 382.**

The Phœnix Mutual Life Insurance Company, of Hartford, Connecticut, and A. B. Cook. — **Appellees.**

Appealed from the Circuit Court of the United States, for the District of Kentucky.

BRIEF FOR APPELLANT.

STATEMENT OF CASE.

On the 31st day of August, 1872, A. B. Cook (husband of appellant) took a policy on the life of his debtor, William G. Harvison, in the Phœnix Mutual Life Insurance Company of Hartford, Connecticut (appellee) for twenty thousand dollars; said Harvison then being indebted to him in that amount

The purpose of said A. B. Cook was to secure said debt to his wife (appellant) for her separate estate, as he then disclosed to Wm. W. Morris, general agent of appellee for Kentucky, and immediately after the countersigning and delivering of said policy to him, by said agent at Louisville, Ky., he executed and delivered to said appellant, as directed by said agent, the following declaration and assignment:

"This instrument of writing certifies that the policy No. 66488 I have taken out on the life of Wm. G Harvison, for

$20,000, in the Phoenix Mutual Life Insurance Company, of Hartford, Connecticut, was taken out by me for the sole benefit of my wife, Fannie M. Cook, and I hereby declare that the above-mentioned life policy of $20,000, and the money secured thereby, is given and assigned to my said wife as separate estate and shall continue to be the separate estate of my said wife; and whether the said Harvison die before or after me, my said wife shall have and receive and hold said money as her separate estate and for her separate and sole benefit, to dispose of as she may think proper."

Said A. B. Cook promptly and regularly paid in advance the annual cash premiums on said policy, up to August 31st, 1880, amounting in the aggregate to $5,300. On the 25th day of August, 1880, said Harvison died at Louisville, Ky., of clot in the pulmonary artery, caused by chronic hepatization of the lungs, and the autopsy developed that the other organs, to-wit, the stomach, intestines, liver and kidneys were in a healthful condition.

Pending the last illness of said Harvison, on the 14th day of June, 1880, appellee, through its agents, by fraud, deceit and threats, operating on the impaired faculties of said A. B. Cook, procured from him the following assignment of said policy for the consideration of $4,000, and the surrender of his premium notes.

"LOUISVILLE, KY., June 14, 1880.

I hereby sell, transfer and assign to the Phœnix Mutual Life Insurance Company of Hartford, Conn. All right and title to the within policy on the life of Wm. G. Harvison, in consideration of the sum of four thousand dollars in hand paid by draft on the said company, and a return of the premium notes."

The following facts are well sustained by the testimony:

1st. That Morris, the general agent of appellee, was fully informed, at the time said policy was issued, of the purpose of

Dr. A. B. Cook to secure the Harvison debt to his wife for her separate estate, and that the said declaration and assignment by said Cook to his wife on a separate paper, was made by the advice and under the direction of said General Agent of appellee; and

2nd. That during negotiations for the purchase of said policy from said Cook by the agents of appellee, appellant more than once vigorously protested against the sale or transfer of said policy by Dr. Cook, and duly and properly informed said agent of said assignment to her, and of her equitable rights in said policy; and she warned them that she would assert her equity on the death of said Harvison, which was daily expected. That her said protest and warnings were disregarded and derided by said agents of said appellee, who by fraud obtained the policy from said Cook and carried it away.

Immediately after the death of said Harvison, appellant gave appellee due notice thereof, and furnished it with the required proofs; and at the expiration of the ninety days thereafter, she duly demanded payment of her claim at the home office of appellee in Hartford, Connecticut, which payment was refused; hence this suit, which was brought in the Jefferson Court of Common Pleas, from whence it was removed to the Circuit Court of the United States for the District of Kentucky, on the petition of appellee, where it was tried and judgment was rendered, dismissing appellant's petition; and from which judgment she prayed an appeal to this Honorable Court, which appeal was granted.

It is but fair to state, as a part of the history of this case, that when said agent of appellee obtained said assignment from said A. B. Cook he was then, and had been for a long time, suffering with great bodily ailment, which required to be treated with opiates, and that his mental capacity and power to resist importunity were much impaired by the constant use, remedially, of morphia.

POINTS AND AUTHORITIES.

1.

A. B. Cook as creditor of Wm. G. Harvison had an insurable interest in his life to the amount of the indebtedness.

Commeck vs. Lewis 15, Wallace 343.

Thatch vs. Metropolitan Ins. Co. 11, Fed Rep. 29.

2.

The policy being made payable to A. B. Cook, his executors, administrators or assigns, is assignable. The use of the word assigns is direct authority for the payment to the assignee.

Pomeroy vs. Manhattan Life Ins. Co. 40, Ill. 397.

New York Life Ins. Co. vs. Flack 3, Maryland 341.

Page vs. Burnstein 102, U. S. Rep. 664.

3.

Although the legal title remains in Cook, the equitable right to have, use and enjoy the donation as separate estate, passed to and vested in appellant in September, 1872, and equity created him her Trustee.

Moreman vs. Moreman 4, Met. 84.

Penn vs. Young 10, Bush 628.

Campbell vs. Galbraith 12, Bush 459.

Thomas vs. Harkness 13, Bush 25.

But the husband has no control over this separate estate of the wife.

Petty vs. Miller 14, B. Mon. 249.

Shackleford vs. Collier 6, Bush 167.

And although the right of a married woman to separate estate in personalty is of modern origin, it is a settled principle of equity applicable to any case where property is given or conveyed to her separate use.

Brown vs. Alden 14, B. Mon. 145.

McCalahan vs. Bearsley 17, B. Mon. 114.

Griffith vs. Griffith 5, B. Mon. 114.

Hutchinson vs. James 1, Duval 76.

Hathway vs. Harrison 8, Bush 395.

4.

Equity will not permit the purpose of Dr Cook, to secure the Harvison debt to his wife as separate estate, as expressed in his declaration and assignment to her of the life policy, to fail, but makes him her trustee and protects her in her equitable right.

Bishop on Married Women, §895; Story's Equity Jurisprudence, §§1368, 1370, 1375, 1380, 1382.

Clancey on husband and wife, 251, 257.

5.

Appellee having put its agents, Morris and Goodale forward to procure the policy on Harvison's life from Cook. All knowledge possessed or obtained by either, was notice to appellee.

53 Penn., 353; 7 Ins. Law Journal, 125; 4 Paige, 137; Marshall vs. Mutual Life Ins Co.; 7 Foster, 157; Patton vs. Ins. Co. 40, N. Hamp. 375; State Mutual vs. Arthur 6 Casey, 315; 23 Penn., 50; 53 Penn., 353; 12 Mich., 202; 23 Ill., 462.

ARGUMENT.

Appellee having purchased the policy from Cook, as a thing of value, for a valuable consideration, and with full knowledge of all that could militate against it, is estopped from denying its validity. Cook was coerced into consenting to the sale by appelle's assurance, that the policy had been forfeited through the misconduct of Harvison, and that it was absolutely void, because of the untruthful answers of the insured in his application; the falsity of all which, appellee admitted, by becoming its purchaser for a valuable consideration. Can it now be permitted to renew such false allegations to affect the equity of appellant? The fact that appellee took an assignment instead of a surrender of the pollcy, strongly indicates that appellee had knowledge of appellant's equitable right in the policy, and acted with apprehension. Should appellee have paid Cook its money

wrongfully for the surrender of the policy, it would have acted in its own wrong, and could not recover back the money; but if it paid the money for an assignment of the policy, it could recover it back on an implied warranty of title. And *cunning* Dr. Goodale, who was chief in the negotiation and wrote the assignment for Cook's signature, evidently contemplated reaching other than Cook's rights, for he purposely ommitted the word *my* and had Cook assign to his company *all rights* in the policy, legal and equitable, by whomsoever held.

Aside from the positive testimony of Dr. Cook. Miss Mamie Roberts, Mrs. Hickman and Chancellor Edwards, that appellant gave Goodale & Morris notice that the policy had been taken out for her and had been assigned to her, and her vigorous protest in their presence against the sale, surrender or transfer of the policy by Dr. Cook, and notwithstanding the denials of Goodale & Morris of all knowledge of the assignment to appellant, we think their previous knowledge of it is very clearly indicated by those acts of Goodale. Why otherwise take an assignment instead of a surrender?

Appellant's equitable right having vested in the policy in 1872, could not be divested by the weakness or fraud of her trustee, nor by collusion between her trustee and appellee, in 1880. It does not appear that A. B. Cook had any creditors, and he could therefore consistently give the policy and the annual cash premiums which fell due thereon to his wife. There is nothing that taints the gift with fraud.

The fact that Dr. Cook did make the declaration and assignment to appellant in September, 1872, and that she has never relinquished her right thereunder, is directly proved, and stands uncontroverted by any evidence.

If the appellee, as purchaser of the policy, was entitled to notice of the prior assignment, it is shown by a large preponderance of proof that its agents who negotiated the purchase did know of the prior assignment at the time of the purchase, and the knowledge of the agent was notice to the appellee.

There is no provision in the application or in the policy for giving notice of an assignment. The reason for which, that would attach in a fire policy does not hold good in life policies, consequently notice is not provided for.

In the case of 4th Paige, 137, the chancellor held it to be too well settled for further controversy that notice to the agent or knowledge of the agent was notice to his principal. But if the fact be that Dr. Cook did assign and deliver this policy to his wife in 1872, for her separate estate, which is fully established by the proof, how could lack of notice to a subsequent purchaser affect her equities? Her title can be affected only by showing it did not exist or that it was made in fraud, neither of which has been attempted.

Says Mr. Story, §1380, citting Fonb. Equity, Book 1, Chap. 2:

"It will make no difference whether the wife's separate estate be derived from her husband or a mere stranger, for as to such separate estate, when obtained in either way, her husband will be treated as a mere trustee, and prohibited from disposing of it to her prejudice."

In the case of Manhattan Life Ins. Co. vs. Smith, 15 Ins. Law Journal, 334, the court held, citing Bliss, §§337, 345, 571, that in the case where the policy was taken for the benefit of the wife, the husband's authority to act for his wife in surrendering the policy was only as *agent*, and where the company had knowledge of a difficulty between the husband and wife, it must know that the confidential relation of agency had ceased, and the surrender by the husband, whether for a cash consideration or for a paid up policy for the husband's benefit, was a fraud upon the wife, and ineffective.

In the case at bar, the company was not left to conjecture as to the conflict between the husband and wife, as the evidence shows, she vigorously protested against the act of her husband.

In Mutual Ins. Co. vs. Bauer, 42 Mich., where under the assurance of the company's agent that the policy was forfeited,

the husband received it from the wife to surrender, and surrendered it for a paid-up policy, when in fact it was not forfeited; it was held that equity would compel the restoration of the policy.

This has none of the features of a wager policy—nor is it alleged in the pleadings to be such. The legal title remains in Dr. Cook, the creditor of the insured.

If the appellee having purchased the policy for value, is not estopped to deny its validity, and can defend upon the grounds that Harvison's answers were untrue and that he forfeited the policy by acquiring dissipated habits, we must say, speaking from the evidence, that the agents of appellee have displayed remarkable aptitude in not knowing and knowing things at the right time. It appears that Harvison did for a while about 1877 drink to some extent, that his wife got divorced from him about that time, and although he then had a desk in the office with the agent Morris, neither Morris nor the Company discovered that he had made false answers, or dissipated, or was divorced from his wife, until after Cook had paid the last annual premium in 1879; notwithstanding some of these facts were made public record in 1877. Dr. Cook's evidence shows that in 1877 he informed Morris of Harvison's dissipation, showed him an advertisement of the divorce, and then left with him the policy to be returned to the home office for surrender, thinking that the habits of Harvison had vitiated it. That Morris then hunted up appellant, whom he knew to be the beneficiary, and got her to persuade Cook to keep the policy alive upon Morris' assurance that the policy would hold good. That Morris after that knowledge accepted the annual premiums up to 1880, can not be questioned, and we maintain that such acceptance of premiums with knowledge of the dissipation waived the forfeiture, had it attached. But the company did not rely on the warranty. It alleges in its pleadings that the application was the basis of and part of the policy, which contains provisions inconsistent with warranty.

Said Mr. Justice Harlan in the case of National Bank vs. Ins. Co:, 5th Otto 673 :

" Where the policy makes the application part of it, and in the one is the provision that the statements of the assured are warranties, and it is provided that erroneous representation, or omissions to make known any material facts shall avoid the policy: But if it was the company's purpose to rely on the warranties, why did it not stop with the express declaration of warranty? Why incorporate into the policy language inconsistant with the law of warranty? The provision for its annulment in the event the assured should make an erroneous misrepresentation or omit to make known facts material to the risk is inconsistent with the warranty.

" Still further, why did the company make the application a part of the policy and thereby import into the contract the covenant of the assured that he had made a just, true and full exposition of all material facts as far as known to him? The application, with its covenants and stipulations, having been made part of the policy, it can not be presumed that the company intended to rely upon the warranty without imparting to it a purpose by studied intricacy or an ingenious framing of the policy to entrap the insured into assuming obligations which perhaps he had not thought of assuming."

The case at bar has all the features of the foregoing. Now, although Harvison did dissipate for awhile to some extent, the proof shows that he abandoned it, and that the Co. subsequently accepted premiums with knowledge of his dissipation.

Said Mr. Justice Field, in the case of Knickerbocker Life Insurance Company vs. Foley, 15 Otto 350 :

" The occasional use of intoxicating liquors, an exceptional instance of excessive drinking or an attack of delirium tremens following a single indulgence will not establish the fact that an

insured person is a man of intemperate habits and avoid a life policy for the breach of a warranty against intemperate habits." If the habits of the insured in the usual, ordinary and every day routine of life were temperate, there was no breach of the warranty."

May it please the court, the learned Judge who determined this case, did not file his opinion or suggest to counsel the grounds upon which he based his judgment, wherefore we have been left to conjecture in battling with his possible reasons; but we respectfully submit, that he took a radically wrong view of the law applicable to the case, and ask to have his decree reversed.

MARC. MUNDY,
Of Counsel for Appellant.

AUTHORITIES CITED.

Commack v· Lewis 15, Wallace 343.
Thatch v. Metropoliton Ins. Co. 11, Fed. Rep. 9.
Pomeroy v Manhattan Life Ins. Co. 40, Ill. 398
N. Y. Life Ins. Co. v. Fleck 3' Maryland 341
Paige, v. Burnstine 102, U. S. 664.
Moreman v. Moreman 4, Met. (Ky.) 84.
Penn. v. Young 10, Bush 628.
Campbell v. Galbreth 12, Bush 459,.
Thomas v. Harkness 13, Bush 23.
Petty v. Miller 14, B. Mon. 247.
Shackleford v. Collier 6, Bush 167.
Griffith v. Griffith 5, B. Mon. 114.
Brown v. Alden 14, B. Mon. 145.
McCalahan v Beasley 17, B. Mon. 114.
Hutchison v. Jones 1, Duval 76
Hathway v. Yeaman 8, Bush 395.
Bishop on Married Women § 895.
Story's Equity In. § 1368. 1370, 1375, 1380, 1382.
Clancy on Husband and Wife, 251–257
53 Penn. 333–7 Ins. Law Jour. 125.
4 Paige 137, 7 Foster 157, 40 N. H. 375.
6 Casey 315, 23 Penn. 50, 53 Penn. 363.
12 Met. 202, 23 Ill. 462, 15 Inns. Jour. 334.
Bliss § 337, 345, 391, 42 Mich. 15 Otto 350.

Abstract of Pleadings and Evidence

1.

Policy of Insurance, p. 24, (printed Record).

This policy of assurance witnesseth: That The Phoenix Mutual Life Insurance Company of Hartford, Conn, in consideration of the representations made to them in the application for this policy, and of the sum of one thousand and twenty-four dollars and—cents to them duly paid by A. B. Cook, creditor, and of the annual payment of a like amount on or before the twenty-seventh day of August in every year during the continuance of this policy, do assure the life of William G. Harvison, of Louisville, in the county of Jefferson, State of Kentucky, in the amount of twenty-thousand dollars for the term of his natural life. And the said company do hereby promise and agree to pay the amount of the said insurance at their office in the city of Hartford, Conn., to the said A. B. Cook, creditor, and his executors, administrators, or assigns, in ninety days after due notice and proof of the death of the said party whose life is hereby insured, any indebtedness to the company on account of this policy being first deducted therefrom.

And the said company do further promise and agree that, if after having received not less than three (3) annual premiums this policy shall be surrendered while in force, a new policy will be issued for the whole amount of even dollars of premiums received by the company (subject to any indebtedness on account of premiums), without subjecting the assured to any subsequent charge, except the interest annually in advance on all indebtedness on this policy.

This policy is issued and accepted by the assured upon the following express conditions and agreements:

First. If the said William G. Harvison shall, at any time during the continuance of this policy, without the consent of the said company previously obtained in writing, visit any part of the Western Hemisphere lying between the tropics, or of the Eastern Hemisphere, between the 36th parallel north and the Tropic of Capricorn, or engage in the manufacture or transportation of gunpowder or fireworks, or in submarine operations, or in any military or naval service whatsoever (the militia not in actual service excepted), or in case he shall die by the hands of justice, or in *or in* consequence of a duel or of the violation of any law of the States or of the United States or of any other country which he may be permitted under this policy to visit or reside in, or if any of the declarations or statements made in the application for this policy, upon the faith of which this policy is issued shall be found—in any respect, or in case any note given for the cash part of premium on this policy shall not be paid at maturity, or in case the interest is not paid annually in advance on any notes which may be given for any portion of the premiums on this policy, then and in every such case this policy shall be null and void.

Second. If the said premiums shall not be paid at the office of the company, in the city of Hartford, Conn., or to an agent of the company, on his producing a receipt signed by the president or Secretary on or before the above date mentioned, then in every such case the said company shall not be liable for payment of the sum insured, or any part thereof, and this policy shall cease and determine.

Third. In every case, when this policy shall cease and determine or become or be null and void, all payments thereon shall be forfeited to this company.

This policy to take effect when countersigned by W. W. Morris, agent at Louisville, Ky.

In witness whereof the said Phœnix Mutual Life Insurance Company of Hartford, Conn., have, by their president and sectary, signed and delivered this contract this twenty-seventh day of August, one thousand eight hundred any seventy-two.

E. FESSENDEN, *President.*
J. F. BURNS, *Secretary.*

Countersigned this thirty-first day of August, 1872.

WM. W. MORRIS, *Agent.*

* * * * * * *

Answers 9, 10, 29, Application p. 26, (pr. Rec.)

9. Is the party married? Yes.

10. Is the party addicted to the habitual use of spirit-ous liquors or opium? No.

* * * * * * *

29. Is the party and the applicant aware that any untrue or fraudulent answers to the queries, or any suppression of facts in regard to the health, habits, or circumstances of the party to be assured, will vitiate the policy and forfeit all payments thereon? Yes. It is hereby declared that the above are fair and true answers to the foregoing questions, and it is acknowledged and agreed by the undersigned that this application shall form the basis of the contract for insurance, which contract shall be completed only by delivery of policy, and that any untrue or fraudulent answers, any suppression of facts, or should the applicant become, as to habits, so far different from condition now represented to be in as to make the risk more than ordinarily hazardous, or neglect to pay the premium on or before the day it becomes due, shall and will render the policy null and void, and forfeit all payments made thereon.

2.

Bill of Complaint, p. 13 (Printed Record.)

Humbly complaining showeth unto your honors, your oratrix, Fannie M. Cook, wife of A. B. Cook, of the State of Kentucky, whose said husband refuses to join with her in this action, and whom she makes defendant herein, together with the Phœnix Mutual Life Insurance Company of Hartford, Connecticut, a corporation created by the laws of the said State of Connecticut, with power to contract, sue, and be sued in its said corporate name, and with said company and the said A. B. Cook, on the 27th day of August, 1872, entered into a contract of insurance, at Louisville, Kentucky (said company then being authorized to make contracts and transact business in said State), by which the said company made, issued, and delivered to said A. B. Cook, at Louisville aforesaid, through its general agent for the State of Kentucky, its policy No. 66488, which was to take effect and become of force when countersigned and delivered by its said agent, W. W. Morris, to said A. B. Cook at Louisville, Kentucky, and which was so countersigned and delivered on the said 27th day of August, 1872, when and where it attached.

That in and by said policy said company then and there assured to said A. B. Cook and his assigns the life of Wm. G. Harvison, of Louisville, Kentucky, a debtor of said A. B. Cook, in the sum of twenty thousand dollars for the term of his natural life, and which said sum the said company, in and by its said policy, for certain considerations therein mentioned, and which will more fully appear by reference to said policy now in the possession and custody of the said company, wherefore your oratrix cannot file it herewith, but calls upon said company to file the same herein, with its answer hereto, undertook and agreed to pay to said A. B. Cook and his assigns, at its office in Hartford, Connecticut, in ninety days after due notice and proof of the death of said Wm. G. Harvison, any amount of indebtedness to said company on account of premiums thereon first to be deducted therefrom; and she states that all the terms of the

said contract to be kept and performed by said A. B. Cook and his assigns were duly kept and performed during the life of the said Wm. G. Harvison, who died at Louisville, Kentucky, on the 25th day of August, 1880, and of whose death due notice and proof were furnished to said company by your oratrix on the 1st and 29th days of September, 1880; and she further says that on the 10th day of January, 1881, more than ninety days after said notice and proofs were furnished to said company, she duly demanded of said company, at its office in Hartford, Connecticut, payment of the sum of $17,340, being the amount due and owing by said company on said policy to your oratrix, as assignee and owner of said policy, and which said sum said company then and there refused and failed to pay to your oratrix, whereby her right of action accrued to her.

Your oratrix, further complaining, showeth unto your honors that the said A. B. Cook made said contract with said company and took out said policy in said company on the life of his said debtor, Wm. G. Harvison, for the sole benefit of your oratrix, which was well known to said company at the time it issued said policy; and she says that on the 19th day of September, 1872, immediately after said policy was delivered to said A. B. Cook as aforesaid, the said A. B. Cook, with the knowledge of the said company and to complete and carry out his said purpose and intent, executed and delivered to your oratrix an assignment thereof of the following purport, to wit:

"This instrument in writing certifies that the policy, No. 66488, I have taken out on the life of Wm. G. Harvison for $20,000 in the Phœnix Mutual Life Insurance Company of Hartford, Connecticut, was taken out by me for the sole benefit of my wife, Fannie M. Cook; and I hereby declare that the above mentioned life policy of $20,000 and the money secured thereby is given and assigned to my said wife as separate estate and shall continue to be the separate estate of my said wife; and whether the said Harvison dies before or after me my said wife shall have and receive and hold said money as her separate estate and for her separate and sole benefit to dispose of as she may think proper.

"(Signed) A. B. COOK."

Which said assignment is filed with the petition of your oratrix at common law, and cannot therefore be filed herewith, but to which she here makes reference as part hereof; and she says that by said assignment and delivery of said policy to her the said A. B. Cook then and there parted with his estate in said policy and appointed the said sum assured therein to be paid to her for her separate estate ninety days after the death of said Harvison, and due notice and proof thereof should be furnished to said company, all of which has transpired, and yet said company still refuses to pay her said sum, for which she sues herein.

3.

Answer of Insurance Company, p. 16 Printed Record.

This defendant saith it is true that by said contract of insurance, or under it, this defendant made, issued, and delivered to said A. B. Cook its policy, No. 66488, which was to take effect and become of force when countersigned and delivered by its agent, W. W. Morris, to said A. B. Cook at Louisville, Kentucky, and which was so countersigned and delivered, but defendant denies that it made or issued said policy at Louisville, aforesaid, or that it made or issued said policy through its general agent for the State of Kentucky, or that it was delivered on the 27th day of August, 1872; * * and this defendant saith that it is true that W. W. Morris, named in said bill, was defendant's general agent in and for the State of Kentucky, with power and authority from this defendant to solicit applications for life insurance, and to receive such applications for the purpose of forwarding them to defendant at Hartford aforesaid, and to countersign and deliver any policies issued on applications so forwarded, and to collect and send to defendant premiums on such policies. * * * This defendant denies that all the terms of said contract to be kept and performed by said A. B. Cook and his assigns were kept or peformed during the life of the said Harvison, but, on the contrary, this defendant

saith that said A. B. Cook broke and failed to perform the terms of said contract to be kept and performed by him, as hereinafter set forth. This defendant has been informed, and it believes it to be true, that said Harvison died, as alleged in said bill, and admits that notice and proof of his death were furnished to it by complainant, and that she demanded of defendant at its office in Hartford, as alleged, payment of the sum of $17,340.00, the sum or amount claimed by her to be due and owing by this defendant to her on said policy, as assignee and owner thereof. * * * * This defendant denies that said A. B. Cook made said contract of insurance with this defendant or took out said policy in defendant's company on said Harvison's life for the benefit or sole benefit of complainant; * * and this defendant denies that said A. B Cook executed or delivered said pretended assignment with the knowledge of this defendant, and saith that it never had any knowledge or information whatever of said pretended assignment, or any such assignment. * * * * *

2. This defendant, for further answer to the whole of said bill, saith that, before the policy herein sued on was issued, A. B. Cook and Wm. G. Harvison made and delivered to defendant the said application, "Q Q Q" in writing, signed by them; that the question "10" in said application was: "Is the party addicted to the habitual use of spiritous liquors or opium?" to which the answer made in said application was "No;" by which answer the said A. B. Cook and Harvison represented and declared to this defendant, in order to obtain said insurance, that said Harvison was not addicted to the habitual use of spiritous liquors or opium; whereas, in fact, the said Harvison was then at the time of making said application and said answer therein, and for a long time had been, addicted to the habitual use of spiritous liquors, and that said answer to question "10" was untrue and fraudulent as to said use of spiritous liquors, and suppressed the fact that said Harvison was, and had been as

aforesaid, addicted to the habitual use of spirit ous liquors, which fact was well known to said Harvison and to said A. B. Cook, and was not known to this defendant, nor had this defendant any knowledge or information whatever in reference thereto until many years after said policy issued, nor until after the payment of the last premium received by this defendant on said policy.

And in the said application said A. B. Cook and said Harvison were asked by question "29:" "Is the party and the applicant aware that any untrue or fraudulent answers to the above queries, or any suppression of facts in regard to the health, habits, or circumstances of the party to be assured, will vitiate the policy and forfeit all payments thereon?" to which said A. B. Cook and Harvison in said application answered "Yes;" whereby it was expressly agreed and stipulated between said A. B. Cook and Harvison and this defendant, as a condition and part of said contract of insurance then and therein applied for, that any untrue or fraudulent answers to the queries in said application above or preceding said question "29," or any suppression of facts with regard to health, habits, or circumstances of said Harvison, should vitiate the policy and forfeit all payments thereon.

And in and by said application said Harvison and A. B. Cook declared that the answers to the questions therein were fair and true answers to said questions, and therein agreed and stipulated with this defendant, as a part of said contract of insurance, that said application should form the basis of said contract of insurance therein applied for, and that any untrue or fraudulent answers therein or any suppression of facts, or if said Harvison should become as to habits so far different from the condition then represented to be in as to make the risk more than ordinarily hazardous, it should and would render the policy null and void, and forfeit all payments made thereon.

This defendant saith that Harvison then was and long had

been addicted to such an habitual and intemperate use of spirit-ous liquors as to materially injure and impair his health, weaken his body, make it liable to sickness and disease, and shorten his life, and greatly increase the risk beyond what it would have been if said answer to question "10" had been true and there had been no suppression of such facts in said application as written. * * * * * *

This defendant further saith that after said application was delivered to and accepted by it, as aforesaid, the said Harvison became and was, as to his said habit of being addicted to the habitual use of spirit-ous liquors so far different from the condition then (in said application) represented to be in as to make the risk more than ordinarily hazardous, as aforesaid, and, as this defendant is informed and believes, and so charges, the death of said Harvison was caused or greatly hastened by said use of liquors, all of which was well known to complainant and said A. B. Cook at the time.

This defendant saith that it is expressly stipulated in said policy that if any of the declarations or statements made in the application for said policy, upon the faith of which (the application) said policy was issued, should be found in any respect untrue, then and in every such case said policy should be null and void. * * * * *

But that this defendant never had any knowledge or information of said breaches, violations, false, fraudulent, and untrue answers, declarations, or statements, or suppression of facts, or of said Harvison becoming as to said habit different, as aforesaid, or any of them, or of said Harvison being or becoming so far different from the condition then at the time of making said application represented to be in as to make the risk more than ordinarily hazardous, until many years afterwards and after the payment of the last premium received thereon by this defendant, to-wit, in the year 1880. * * * *

3. And this defendant, for answer to the whole of said bill,

further saith and charges that if said defendant, A. B. Cook, ever made said pretended assignment or delivery of said policy to complainant, as by her alleged, he afterwards, and in the life-time of said Harvison, rescinded such assignment and again received from complainant and took possession of said policy with the knowledge and consent of complainant, and thereafter, and long before the death of said Harvison, to-wit, on the 14th day of June, 1880, the said A. B. Cook made and delivered to this defendant his certain transfer and assignment in writing, signed by him and endorsed on said policy, in the following words and figures, to wit:

LOUISVILLE, KY., *June* 14, 1886.

"I hereby sell, transfer, and assign to the Phœnix Mutual Life Insurance Co. of Hartford, Conn., all right and title to the within policy on the life of W. G. Harvison in consideration of the sum of four thousand dollars in hand paid by draft on the said Co. and a return of the premium notes.

"(Signed) A. B. COOK."

And thereby, in consideration of the sum of four thousand dollars in hand paid him by draft on this defendant and the return of the premium notes of said A. B. Cook, which he had given for unpaid premiums on said policy and which were of great value, to wit, $2,660, and in further consideration of the settlement then and there agreed upon between him and this defendant in compromise of the contingent liability and all liability of this defendant on the said contract of insurance, which was then denied by this defendant because of the matters in above paragraph No. 2 set forth, sold, transferred, and assigned to this defendant all right and title to said policy and surrendered and delivered to this defendant said policy, with his said written transfer and assignment signed by him endorsed thereon; and this defendant then and there, and in pursuance of said compromise, delivered to said A. B. Cook his said premium notes and a draft of one A. W. Goodale, adjuster, on this defendant for the

sum of $4,000.00, payable at sight to the order of said A. B. Cook which draft this defendant thereafter in due course paid at sight to the order of said A. B. Cook. This defendant files said draft herewith as exhibit "R R R," and it is in the following words and figures, to wit:

"$4,000. LOUISVILLE, KY., *June* 14, 1880.
"At sight pay to the order of Dr. A. B. Cook four thousand dollars in current exchange on New York in settlement of policy No. 66488; value received." * * *

This defendant saith that said settlement and compromise was negotiated and agreed upon in the presence and with the full knowledge of complainant. * * * *

4. And this defendant further saith that the complainant was present and took part in the discussion of the terms of the compromise and agreement in the last preceding paragraph set forth, and had notice beforehand and full knowledge at the time of everything done and performed by and between this defendant and said A. B. Cook, as therein set forth, and had ample and every facility and opportunity for informing this defendant of her said pretended claim and assignment, nor was she in any manner restrained or hindered in any way or by any person from so informing this defendant, yet wholly failed to give or permit this defendant to receive any knowledge or information whatever of the said pretended assignment, or any right, title, or claim whatever by her to or under said policy, and suffered and permitted defendant to surrender said notes and deliver said draft in her presence and pay said draft with her knowledge without causing to be given or giving to this defendant or in any way permitting this defendant to know or have any information or knowledge whatever of said alleged assignment or any assignment to her, or any right, title, or claim whatever by her to or under said policy.

4.

Answer of A. B. Cook, p. 30 (Printed Record.)

1. Answering he admits that the said complainant is his wife, and says that it is true that he refused to join with her in this suit, and for reasons which he will hereafter state.

2. He admits and says that it is true that he procured and took out the life policy sued on on the life of Wm. G. Harvison, his debtor and brother-in-law, in the Phœnix Mutual Life Insurance Co. of Hartford, Connecticut, his codefendant, in the sum of $20,000, which said Harvison owed him, for the sole and separate use and benefit of complainant, which fact was well known to said company at the time, through its general agent for Ky., Wm. W. Morris, to whom he communicated said fact at the time, and that in so taking out said policy he acted under the advice of said agent, to whom he gave directions to have said policy issued in the name of and to complainant, but he says when said agent delivered said policy this defendant discovered it was issued to him and in his name, to which he called said agent's attention, and that said agent then and there explained to him that being upon the life of a debtor it was necessary that said policy should issue to this defendant, and instructed this defendant that to transfer the same and make complainant the beneficiary this defendant could assign said policy to her on a separate paper; and he says that, acting under said advice, this defendant did afterwards, on the 19th day of Sept., 1872, execute and deliver to said complainant the assignment of said policy set up in her said bill of complaint, and then and there delivered said policy to her, and during the lifetime of said Harvison paid the annual premiums and kept the said policy alive for her sole and separate benefit, having assigned said policy and the money secured thereby to her for her separate estate, as appears in said assignment.

He further states that he refused to join with her in this suit

for the following reasons: That in Dec., 1879, one A. W. Goodale, the adjuster of said insurance company, in company with said W. W. Morris, said general agent, called on this defendant and stated to him that said policy had become void and worthless, and offered on behalf of said company, to purchase said policy and to pay this defendant therefor the sum of $1,100, which would be the then cash value thereof if not void, and which offer this defendant rejected; that on several occasions thereafter the said Goodale came to this defendant and renewed the offer for said company for said policy up to the sum of $4,000, all of which offers this defendant rejected. He says he informed said Goodale and said Morris that he had assigned said policy to said complainant, and had no right to sell or cancel it; and he further says that said complainant, in the presence of this defendant and said Goodale and said Morris, protested against the surrender, sale, or transfer or cancelment of said policy, and told said Goodale and said Morris that it had been taken out for her benefit, and had been assigned to her and belonged to her; that said Goodale thereupon said he did not regard her claim, and that if I did not at once accept his proposal he would have suit instituted against me and compel me to surrender said policy and get nothing therefor. In my great perplexity, being at the time in feeble health and compelled to use opiates constantly, and dreading to be dragged into court, and being assured by said Goodale that said policy was void and being uncertain and apprehensive, I yielded to his threats, and to avoid said threatened suit I delivered and surrendered said policy to him for said company, and, though coerced thereunto as aforesaid, this defendant was unwilling and would not go into the courts as a suitor, and he refused to join with complainant in this suit.

He, further answering, says that he tendered the said money received by him from said company for said policy to complainant, and she refused and refuses to accept the same, and he says

that she did not direct him to make said surrender of said policy, nor has she since approved of his aforesaid act; all of which matters and things this defendant is ready to aver and prove as this court may direct, and he prays to be hence dismissed, with his reasonable cost and charges.

5.

Decree and Appeal, p. 33 (Printed Record.)

And thereupon this cause was fully argued by counsel for both complainant and defendant and was submitted to the court for its decision, and thereafter, upon due deliberation upon the said cause, the court being sufficiently advised, it was decreed and ordered by the court that the bill of complaint herein of Fannie M. Cook, complainant, against The Phœnix Mutual Life Insurance Company of Hartford, Connecticut, be, and it is hereby dismissed, and that the defendant recover of the complainant its costs herein expended, which shall be taxed by the clerk, and may have execution.

And thereupon came the complainant by counsel and prayed an appeal from the decree herein to the Supreme Court of the United States, which is granted.

6.

Deposition of A. B. Cook, p. 34 (Printed Record.)

Int. 5. State whether or not you informed the general agent at the time of your purpose to take the policy for the benefit of your wife, and what explanation, if any, he gave you for not having your wife's name appear in the application and the policy as beneficiary?

Ans. I did so inform him. When the application was presented to me I asked the general agent why my wife's name did not appear in the application as the beneficiary; that it was taken out for her sole benefit, and that I did not want it for myself. The general agent replied that as I was a creditor

her name could not appear in the application; that I would have to make her an assignment on a separate paper. When the policy came I again asked the general agent if there was no way by which my wife's name could appear on the policy as the beneficiary; that I wanted it so fixed that under no circumstances could she be deprived of its benefits. The general agent replied that her name could not appear; that I would have to give her an assignment on a separate paper; that this would be much better and make it much stronger.

Int. 6. State whether or not you did make an assignment of the policy to your wife on a separate piece of paper after you received it.

Ans. I did.

Int. 7. Look at the paper now shown you, marked at the bottom "R. C. K. (1)," and state whether or not the paper is in your handwriting and signed by you, and is it or not the assignment you made of said policy to your wife?

Ans. The paper is in my handwriting. The signature is mine. It is the assignment I made to my wife.

Int. 8. State whether or not you executed that paper on the day it bears date—19th of September, 1872—and whether or not you delivered the said paper and the policy therein referred to on the same day to your wife.

Ans. I did, and delivered the same and the policy to my wife on the same day. * * * * *

Int. 12. To whom did you pay the annual premiums which you paid on said policy from 1872 to 1880?

Ans. I paid the annual premiums to W. W. Morris, general agent of the Co.

Int. 13. When and where did Wm. G. Harvison, the insured, die?

Ans. He died on the 25th of August, 1880, at St. Joseph's infirmary, on 4th St., Louisville, Ky.

Int. 14. Of what did he die?

Ans. He died of chronic hepatization of the lungs.

Int. 15. State whether or not an autopsy was made on him after death. If so, who was present at the time?

Ans. An autopsy was made at the time; the dissection was made by Dr. H. C. Miller; present, Drs. G. W. Ronald, C. B. Blackburn, and myself. I do not recollect positively that any others were present. * * * * *

Int. 19. Look at the assignment on the back of the policy sued on, dated June 14, 1880, and state whether you signed that assignment with your signature and who wrote the assignment.

Ans. I signed the assignment. The assignment was written by Dr. Goodale.

Int. 20. State all the circumstances under which you signed that assignment and whether or not the plaintiff was present and consented to it or protested against it.

Ans. For several months the agents of the Co. (W. W. Morris & Dr. Goodale) had harrassed and besieged me to give up the policy. Each one had repeatedly stated if I did not give up the policy that I would not get anything for it. Dr. Goodale asserted that the policy was of no account; was void; not worth anything; that if I did not give it up I would lose all the money I had paid on the policy, and frequently said the Co. would sue me for surrender of the policy and I would get nothing back. I claimed that I had acted in good faith; that I had concealed nothing from the Co.; that I had paid the annual premiums; that the Company had received my money; that the premiums were paid up to Aug. 27th, 1880, and that the Co. had no right to demand the policy. Dr. Goodale still repeated his threats of suit for the surrender of policy.

When Dr. Goodale returned to this city, in June, 1880, he visited my office several times, insisting that I should give up the policy. I said that I did not want to discuss the subject of the policy, and requested him never to come to my office again to talk about the subject.

I had informed Dr. Goodale that the policy belonged to my wife; that it was her property, and that I could not make any settlement. After I had requested Dr. Goodale not to visit me any more to discuss the subject of surrendering the policy he persisted in coming afterwards, urging me to give up the policy and repeating his threats of bringing suit if I did not accede to his demands. I had told Dr. Goodale during the interviews that the Co. had received my money after full knowledge of all the facts and that it was a fraud and swindle on the part of the Co. to take the policy. At his last visit, under his threats and demands, I finally yielded. After he received the policy he asked me if I was satisfied. I told him I was not; that it was an outrage and swindle. Dr. Goodale replied that it was the best thing I could do; that the policy was not worth the money he had offered, but he had made the settlement to avoid a lawsuit. He tried to impress me that it was great generosity on the part of the Co. to allow me anything for the policy.

In all the interviews at which my wife was present she positively and firmly protested against the surrender of the policy. In an interview before the last one she told Dr. Goodale she would never consent to give up the policy; that it was her property and that Mr. Morris had instructed her why it was necessary to have the assignment on a separate paper. Dr. Goodale requested her to consider the matter. She replied she would never change her mind; that she was firm as a rock. At the last interview she protested violently against the surrender of the policy. She told Dr. Goodale that I was in no condition to transact important business. Dr. Goodale curtly said that if she did not think her husband competent to transact business she had better get a divorce. She warned Dr. Goodale against taking the policy; that if he did it was at his own risk; that she would hold the Co. responsible for the full amount of the policy. Dr. Goodale then excitedly asked if her name appeared on the policy. My wife immediately replied

Ans. He died of chronic hepatization of the lungs.

Int. 15. State whether or not an autopsy was made on him after death. If so, who was present at the time?

Ans. An autopsy was made at the time; the dissection was made by Dr. H. C. Miller; present, Drs. G. W. Ronald, C. B. Blackburn, and myself. I do not recollect positively that any others were present. * * * * *

Int. 19. Look at the assignment on the back of the policy sued on, dated June 14, 1880, and state whether you signed that assignment with your signature and who wrote the assignment.

Ans. I signed the assignment. The assignment was written by Dr. Goodale.

Int. 20. State all the circumstances under which you signed that assignment and whether or not the plaintiff was present and consented to it or protested against it.

Ans. For several months the agents of the Co. (W. W. Morris & Dr. Goodale) had harrassed and besieged me to give up the policy. Each one had repeatedly stated if I did not give up the policy that I would not get anything for it. Dr. Goodale asserted that the policy was of no account; was void; not worth anything; that if I did not give it up I would lose all the money I had paid on the policy, and frequently said the Co. would sue me for surrender of the policy and I would get nothing back. I claimed that I had acted in good faith; that I had concealed nothing from the Co.; that I had paid the annual premiums; that the Company had received my money; that the premiums were paid up to Aug. 27th, 1880, and that the Co. had no right to demand the policy. Dr. Goodale still repeated his threats of suit for the surrender of policy.

When Dr. Goodale returned to this city, in June, 1880, he visited my office several times, insisting that I should give up the policy. I said that I did not want to discuss the subject of the policy, and requested him never to come to my office again to talk about the subject.

I had informed Dr. Goodale that the policy belonged to my wife; that it was her property, and that I could not make any settlement. After I had requested Dr. Goodale not to visit me any more to discuss the subject of surrendering the policy he persisted in coming afterwards, urging me to give up the policy and repeating his threats of bringing suit if I did not accede to his demands. I had told Dr. Goodale during the interviews that the Co. had received my money after full knowledge of all the facts and that it was a fraud and swindle on the part of the Co. to take the policy. At his last visit, under his threats and demands, I finally yielded. After he received the policy he asked me if I was satisfied. I told him I was not; that it was an outrage and swindle. Dr. Goodale replied that it was the best thing I could do; that the policy was not worth the money he had offered, but he had made the settlement to avoid a lawsuit. He tried to impress me that it was great generosity on the part of the Co. to allow me anything for the policy.

In all the interviews at which my wife was present she positively and firmly protested against the surrender of the policy. In an interview before the last one she told Dr. Goodale she would never consent to give up the policy; that it was her property and that Mr. Morris had instructed her why it was necessary to have the assignment on a separate paper. Dr. Goodale requested her to consider the matter. She replied she would never change her mind; that she was firm as a rock. At the last interview she protested violently against the surrender of the policy. She told Dr. Goodale that I was in no condition to transact important business. Dr. Goodale curtly said that if she did not think her husband competent to transact business she had better get a divorce. She warned Dr. Goodale against taking the policy; that if he did it was at his own risk; that she would hold the Co. responsible for the full amount of the policy. Dr. Goodale then excitedly asked if her name appeared on the policy. My wife immediately replied

that her name did not appear; that she had already explained why it did not; that Mr. Morris had told her in my presence that as I was a creditor her name could not appear. Dr. Goodale tartly replied that he—heard enough of such talk; that he did not want to hear anything more about her claim. He then said he had come to get the policy, and demanded that I should give it up or he would sue me for surrender. My wife again warned him of the consequences; that he took it with his eyes open and against her protest.

Int. 21. State whether or not your wife at any time after September 19, 1872, surrendered or returned to you the assignment you had made to her of the policy sued on with a view to its cancelment, or as surrendering her rights under it.

Ans. She did not. * * * * *

Int. 23. State what amount of money W. G. Harvison owed you at the time of his death in 1880.

Ans. Between $25,000 and $30,000.

Int. 24. Look at the application marked Exhibit "Q Q Q," and state in whose handwriting it is filled up.

Ans. In the handwriting of W. W. Morris.

Int. 25. Do you or not mean W. W. Morris the general agent of the Co?

Ans. I do.

Int. 26. State whether or not you were present when Mr. Morris filled up that application.

Ans. I was not. * * * * *

Said W. W. Morris again advised me to pay the premium and keep the policy alive; that it was a good investment, and the money would be sure after said W. G. Harvison's death. I left the policy on his desk to be sent to the home office of the Co. During the day he sent a message to me by my wife, requesting me to come to his office and pay the premium on the policy. I again visited his office; he assured me that the divorce did not and could not affect the validity of the policy; that

it was the best investment I could make. With these assurances I paid the annual premium and kept the policy alive.

Int 28. You have stated in the last part of your answer that the general agent stated to you that the divorce of W. G. Harvison would have no effect on the policy. State what he said to you at that time, if anything, as to the drinking habit acquired by Harvison affecting the policy.

Ans. The general agent stated positively that the drinking habit of W. G. Harvison would not effect the policy.

Int. 30. When did you first know or receive information that Wm. G. Harvison, the assured, had acquired the habit of drinking?

Ans. My recollection is that it was in 1875.

Int. 31. State whether or not, according to your information or knowledge, said Harvison was addicted to the habit of drinking in 1872, when the policy was taken out.

Ans. He was not addicted to drinking in 1872, when the policy was taken out. If he was addicted to drink I did not know it.

Int. 32. When you first learned of Harvison's drinking what did you do in consequence of such information, and to whom did you communicate it?

Ans. I called upon the general agent, W. W. Morris, and informed him that Harvison was drinking.

Int. 33. State whether or not said Harvison continued the habit of drinking up to the time of his death; and how much did you see of him after 1875?

Ans. He did not continue the habit of drinking up to the time of his death. I saw him frequently on the street from 1875 to the spring of 1877. I did not see him from the spring of 1877 until March, 1880. From the last date until the time of his death I saw him frequently.

Int. 34. From what you saw or knew of Harvison's drinking habits after 1875, and from what you saw of him after his return to Louisville, of which you have spoken, and from what you

learned of his condition as consulting physician during his last sickness, and from what you learned from the autopsy as to the cause of his death, will you please state whether or not his habit of drinking made the risk on his life extra hazardous or materially increased the risk, or in any way, either directly or indirectly, proximately or remotely, contributed to or caused his death?

Ans. To the best of my knowledge, I do not believe that his habit of drinking made the risk on his life extra hazardous, nor did it materially increase the risk, nor was it a factor as a cause of his death. * * * * * *

Int. 38. Had you at any time or have you now any information of any by-law or any rule of the Phœnix Mutual Life Insurance Company, the defendant, directing how assignments of policies shall be made?

Ans. I never had nor have I now any information of any by-law or rule of the said Co. directing how assignments of policies shall be made.

Int. 39. What was the total amount of cash premiums you paid to the company on the policy in controversy.?

Ans. My recollection is that I paid about five thousand three hundred ($5,300) dollars. * * * *

4. Dr. Goodale has testified that you told him that you knew Mr. Harvison drank a great deal; state whether or not you so told Dr. Goodale, and state what you said to Dr. Goodale on that subject.

Ans. I did not so state to Dr. Goodale; I told Dr. Goodale that I had twice seen Harvison under the influence of liquor, that I had informed Morris of the fact, and that Morris knew as much about Harvison as I did.

7.

Dr. G. W. Ronald's deposition p. 49 (Pr. Rec.)

Dr. G. W. RONALD, being duly sworn, testified as follows:

Int. 1. What is your profession, and how long have you been engaged in the practice?

Ans. Have been engaged in the practice of medicine since 1850 or 1851, I think, but am not certain—1851, though, I think.

2. Did you or not, on the 26th day of August, 1880, attend as physician the post-mortem examination of Wm. G. Harvison, dec'd, at the office of J. C. King, undertaker, in Louisville?

Ans. I attended the post-mortem examination; I can't remember the date, but I think it was at that time.

3. Name, if you please, the other physicians and surgeons who attended and took part in the examination.

Ans. Dr. Cary Blackburn, Dr. Miller, the coroner; Dr. Cook, and, I think, Dr. Frazee was present.

4. From the autopsy what was developed as to his condition internally and the cause of his death?

Ans. There was some effusion of cerum and bloody matter in the left plural cavity; the stomach, intestines, liver, and kidneys were in healthy condition. The right lung was in a state of complete hepatization; the upper lobe of the left lung partially hepatized; there were clots of blood in the pulmonary artery extending an inch and a half or two inches up the artery; this, I think, was the immediate cause of his death.

5. When the habit of drinking spirit-ous liquors conduces to cause, or causes, disease, what organs are attacked most generally?

Ans. I think it is generally conceded that the liver is the organ generally attacked, producing also, I should suppose, chronic inflam-ation of the stomach. Constant drinkers sometimes die of what is called hob-nail, which is a hardening of the different portions of the liver.

6. Did you know anything of the habits of Wm. G. Harvison?

Ans. I did not.

7. From your knowledge of medicine and the effect upon the human system from the habit of drinking, and from your knowledge acquired from the autopsy on Wm. G. Harvison, was or not his death caused, or indirectly, proximately, or remotely, by the habit of drinking spirit-ous liquors?

Ans. That is a very difficult question to answer. I can only state that a man who never drank a drop of liquor in his life might die under the same circumstances as Mr. Harvison died; then again one who had drank might also die under the same circumstances. Not knowing anything of Mr. Harvison's habits I cannot say whether or not such was the cause of his death. I will add that the liver and stomach being found in normal condition would lead me to suppose that he did not die from excessive use of ardent spirits; though, as I have already said, I could not be certain.

8. In the condition of the liver and stomach as developed in the autopsy, did you discover any signs or symptoms which indicated to you that Harvison had been in the habit of drinking to any extent, or to what extent?

Ans. I did not discover any.

8.

Deposition of Chancellor Edwards. p. 56 (Pr. Rec.)

Int. 1. State your name and profession and your present position.

Ans. I. W. Edwards, name; lawyer chancellor of the Louisville chancery court.

2. State whether or not at any time and when, as near as you can remember, you acted as counsel and adviser of Dr. A. B. Cook, in the matter concerning the assignment or surrender of a policy taken out by him in the Phœnix Mutual Life Insurance Co. on the life ef W. G. Harvison, wherein the contro-

versy arose between A. B. Cook and said company or its agents.

Ans. I did some time in the latter part of 1879 or the early part of 1880 is my recollection; perhaps earlier than I have stated; certainly in 1879 or early in 1880.

3. With what officers of the company did you and Dr. Cook communicate or correspond?

Ans. Our interviews were with Mr. W. W. Morris, of Louisville, and agent of the company, and a gentleman introduced to me as Dr. Goodale, a gentleman professing to act for the company; I do not know his position. * * *

6. What was the matter in controversy, and what the purpose and purport of the interviews to which you have referred between the parties?

Ans. The first interview was the one at the Galt House, to which place I went with and at the request of Dr. Cook, as I learned from the parties concerned some years prior to that time the company named had issued a policy upon the life of a brother-in law of Dr. Cook, named Harvison, taking a risk to the extent of $20,000, if I remember aright, the premium on which, up to that time, had been paid by Dr. A. B. Cook, which, with interest, amounted to about $5,000, if I recollect aright. Dr Goodale, for the company, insisted that the policy had been procured upon false and fraudulent statements made by the assured as to his habits in regard to intoxicating drinks. Dr. Cook claimed that he had acted in perfect good faith in the matter, and that W. W. Morris, who had procured the risk, knew more of the personal habits of the assured than he did. The effect or purport of the interview was, on the part of the company, to secure the surrender and cancellation of the policy upon the payment to Dr. Cook of a part of the money received from him as premiums, claiming, however, that any money so paid or refunded was a mere gratuity; that the company was not bound by the policy nor bound to return any of the premiums, Dr. Cook claiming the exact contrary. At the first

interview Dr. Goodale offered, if I recollect aright, 1,500. For Dr. Cook I insisted that if the policy had never been enforcable for the reasons stated the company should at least return Dr. Cook all the money it had received from him, and perhaps I insisted for interest also. I remember stating that under the facts stated, about which I had no knowledge, I could never consent to advise Dr. Cook to accept the offer or to consider any offer less than $3,000, and Dr. Cook declined the offer made, and that ended the interview. * * * *

9. You have mentioned that Mrs. Cook, the complainant, with her daughter, came into Dr. Cook's office while you and Dr. Cook and Mr. Morris were having an interview on this subject. Will you please state what she then said to Mr. Morris and in his presence, as to the ownership of the policy and as to Dr. Cook's assigning it or surrendering it?

Ans. It is impossible for me now to state exactly what Mrs. Cook said, but I remember she came into the office with her daughter and in an excited manner opposed any settlement or adjustment of the matter, claiming that she owned the policy; that it had been assigned to her.

10. State whether or not Mrs. Cook in that interview stated to Morris that he knew the policy had been taken out for her benefit and assigned to her accordingly, as he had directed Dr. Cook how to make the assignment.

Ans. She stated that in substance. She claimed the assignment had been made to her through the agency of Mr. Morris as her friend, and she complained of his trying to adjust the matter contrary to her wishes. The assignment was not produced.

11. Please look at the paper I now show you, marked on its bottom or its face "R. C. K. 1," and which has been made part of the deposition of Dr. A. B. Cook, and state whether or not Mrs. Cook showed you this paper pending those negotiations.

Ans. I had never seen this paper at the interview last named

so far as I now remember, but my best recollection is that Mrs. Cook subsequently showed me this paper at my office; brought it around there and showed it to me. Of this I am not positive. It was vary shortly after that interview at Dr. Cook's office; it may have been the next day. Aside from information obtained from the interview at Dr. Cook's office, I am unable to say with certainty whether my knowledge of that assignment is from hearing Mrs Cook talk about it, as she talked to me repeatedly about it, or from an inspection of it.

15. Is your recollection so clear that you can say from memory, not refreshed from conversations of Mrs. Cook or her husband, that in that interview she stated before you left the room that she owned the policy?

Ans. I think it is, except that I think she used the word assigned or transferred; I don't mean to be positive as to the exact word; my memory is very distinct, and I don't think that I can be mistaken, that she said the policy had been assigned to her, but it is possible I might be mistaken on that point, though I think I am not, for I know she talked to me about it having been assigned to her repeatedly before and after the time.

16. Was not what she said at that interview in substance that Dr. Cook had always said the money on that policy should be hers—had promised it to her; can you distinguished what she said from this by memory?

Ans. I think I can; indeed my recollection is that there was no question made as to the existence of that assignment at that interview or any other with me, but she may have used the other language used in the question also.

17. What enables you to fix in your memory that Mrs. Cook said anything about an assignment or transfer in that interview?

Ans. Nothing special, other than the decided manner in which she asserted her right to control the matter. * * *

19. What did you understand was the reason, if any, complainant did not produce the assignment at the interview?

Ans. No reason was assigned, so far as I recollect; its existence was not questioned. I think she and Mr. Morris had a dispute about some other points, but the assignment was not questioned.

20. Do you remember complainant telling you, after you knew she had engaged her counsel, that she had found an assignment of that policy and was going to sue the company?

Ans. I do not, with reference to that date, at all. I do recollect—at least I think I do—of her bringing me that assignment, and I think it was before the sale, but of this I am not positive, and I am sure she said all the time she would not submit to a settlement unless it was made to her. * * *

Recross-examination:

1. Do you remember, as a matter of memory, that he, Morris, noticed or knew that Mrs. Cook, said that the policy had been assigned to her, or anything to that effect?

Ans. I don't remember that he said a word about it. I can't say what he noticed. She certainly said so, and very decidedly.

9.

Dr. Cary B. Blackburn's deposition p. 65 (Pr. Rec.)

Int. What is your profession, and how long have you been engaged in the practice of it?

Ans. I graduated in 1861, but did not commence the practice of medicine until 1864.

2. State whether or not you attended, professionally Wm. G. Harvison during his last sickness; if so, state where you attended him, and how long.

Ans. Yes sir; he came to see me at my office on March 4th, 1880, and I doctored him up till the time of his death, on August, 25th, 1880. * * *

4. State whether or not you attended the autopsy on his remains and took part therein on the 26th day of August, 1880; if so, state who was present at the autopsy and took part therein.

Ans. Yes, sir; I was there. Dr. Ronald, Dr. A. B. Cook, Dr. H. C. Miller, and Dr. Frazee, and myself.

5. From the autopsy what was developed as to the condition of Mr. Harvison's internal organs and the cause of his death?

Ans. We found effusion of cerum in the left pleural cavity and pleuritic adhesion to the right pleura and complete hepatization of the right lung, and the upper lobe of the left lung was also hepatized. We found the stomach, liver, and kidneys, and intestines in a perfectly healthy condition as far as I could judge, and we examined them pretty close. We found about half a gallon of bloody cerum in the left pleura. We found a large fibrinous clot in the bicuspid valve of the heart about two inches and a half long and somewhat organized, and it projected into the pulmonary artery, stopping up the artery, which caused the immediate death.

6. State whether or not you made notes at the time and whether before making the foregoing answer you referred to such notes to refresh your memory as to facts.

Ans. Yes, sir; made at the time of the post mortem. I have referred to such notes.

7. State what examination you then made of the stomach, liver, and kidneys.

Ans. Well, they were examined very closely, especially by me, as I thought there *was* the cause of death—all those organs —the stomach, liver, and kidneys; I cut the liver open, sliced it, and made as close an examination as possible. I examined the stomach and kidneys in the same way; they were taken out and laid on a box and examined.

8. Where the habit of drinking spirit-ous liquors conduces to cause or causes disease, what internal organs are attacked and suffer from such cause?

Ans. The liver, in my opinion—the liver and kidneys, but the liver most.

9. From the condition of his liver and kidneys as developed by the autopsy, and from your medical experience, was or not the disease of which Mr. Harvison died caused directly or indi-

rectly, proximately or remotely, by a habit of drinking spirituous liquors?

Ans. No; not in my opinion, sir.

10.

Deposition of Miss Mamie Roberts, p. 68 (Pr. Rec.)

Int. 1. State your name, age, residence, and whether you are the daughter of the complainant, Mrs. Fannie M. Cook.

Ans. Mamie M. Roberts; seventeen May 2nd, 1882; Louisville, Kentucky. Yes, sir; I am the daughter of complainant, Fannie M. Cook.

2. State whether or not you know Dr. Goodale, the gentleman now present, how long you have known him, and where you first became acquainted with him.

Ans. Yes, sir, I do know Dr. Goodale. I met Dr. Goodale a year ago last June. I met him in papa's office, and was introduced to him by papa.

3. Who do you mean by papa?

Ans. Dr. A. B. Cook, my step-father.

4. Who was present besides Dr. Goodale, Dr. Cook, and yourself?

Ans. No one else; there were four of us—mama, Dr. Cook, Dr. Goodale, and myself.

5. How do you fix the time—you say you met him in June, 1880?

Ans. I know it was a year ago last June, because we had just returned from New York the day before Dr. Goodale came.

6. If there was any conversation at that time between Dr. Goodale, Dr. Cook, and your mama about the policy on Mr. Wm. G. Harvison's life you will please state what each of them said, as nearly as you remember it.

Ans. Dr. Goodale told mama that he had called to see papa about the policy on Mr. Harvison's life. He told mama that papa would have to give up the policy, because Mr Harvison

was drinking and the company would not carry it any longer. Mama told Dr. Goodale that Mr. Harvison was not drinking at all; that he was ill from other disease, and the company had said nothing about settling the policy until they found that Mr. Harvison was about to die. Mama told Dr. Goodale that papa had taken the policy out for her and had assigned it to her, and she would not make any compromise whatever; that the policy was taken out to be paid at Mr. Harvison's death, and she would certainly never give it up until then, when she could collect the full amount of the policy—at Mr. Harvison's death. That is all I remember about that conversation. Dr. Goodale did not stay very long after that conversation; that was the first one.

7. Did you after that hear another conversation between Dr. Goodale and your mother and Dr. Cook upon the same subject—that is, the subject of the policy? If so, state when and where, and who was present, and state as nearly as you can remember what each of them said at that interview about the policy.

Answer. Yes, sir; I heard another conversation about the policy on the following Monday at papa's office. Mama, papa and I were in the office and Dr. Goodale came in. Dr. Goodale told papa that he had come to get the policy, and that if he did not give it up that evening he would enter suit at once. Mama told Dr. Goodale that papa was sick and was in no condition to transact business; that the policy belonged to her and not to papa and was taken out for her and had been assigned to her. She forbade him taking it and told him if he took it he took it with his eyes open and at his own risk; that she would make the company pay her the full amount at Mr. Harvison's death. Dr. Goodale told mama that if she could not trust papa to attend to her business that she had better get a divorce from him; that he might awake some night and kill her, and that she had better go over and consult with her friend, Col. Mundy, who was in-

sane upon the subject of life policies. Dr. Goodale still insisted upon papa giving up the policy, offering $2,500. Papa told Dr. Goodale that he could not sell; the policy belonged to mama and she would not consent to give it up Dr. Goodale then told papa that he would give him $3,000 for the policy. Papa still refused. Dr. Goodale then became very much excited and showed a good deal of temper and said he would give papa $4,000; that he must have the policy, and if papa did not accept his offer that evening that he would bring suit at once and compel him to give it up, and then he would get nothing. Mama still protested all the time and said she would never give up that policy, and that she did not intend to be cheated out of it. Dr. Goodale then became more excited than ever, and asked papa if mama's name appeared on the policy. Mama replied that she had told Dr. Goodale why her name did not appear on the policy, because Mr. Wm. W. Morris said that papa would have to assign it to mama on a separate paper, which he had done.

8. Did they exhibit the policy of which they were speaking before you at that time?

Ans. No, sir; they did not; I did not see it at all.

9. Was the policy surrendered or assigned to Dr. Goodale while you were present? If so, state by whom.

Ans. No, sir; I left the room before Dr. Goodale got it.

10. Do you know whether he got the policy that day. If so state how you know that fact.

Ans. Yes, sir; I know he got it that day, for in a short time after I went upstairs mama came up very much excited and said she wanted me to go over to see Col. Mundy with her at once. Dr. Goodale had taken her policy after her protesting against it all the time. I went with mama at once to see Col. Mundy. I remember now what it was Dr. Goodale said when I left off. He got very angry at mama because she said she would never give up the policy until Mr. Harvison's death, and

said he did not want to hear anything more about the policy belonging to mama, and he did not care for her claim; that all he wanted was the policy and that he must have. * *

12. State whether or not you were present in Dr. Cook's office some time before you met Dr. Goodale there, and when you met Judge Edwards and Mr. Wm. W. Morris in his office. State what occurred and was said and who was present at that time, if you remember such an occasion.

Ans. Yes, sir; I was in papa's office at the time Mr. Morris and Judge Edwards came in. I think it was in February. I know it was in the winter time. When Mr. Morris came in he told papa that he would like to see him privately, looking at me as much as to order me out. Of course I got up and went out, feeling very much hurt at the time. I met mama coming down the steps as I came out of papa's office. I told her the way Mr. Morris looked at me and what he said to papa. She said that I should not be ordered out of papa's office; took me by the hand; said I should go back in the office with her. When mama and I went in we found Mr. Morris in a dispute with papa about the policy. Mr. Morris insisted that papa had promised to make the compromise, and papa insisted that he had not promised to make the compromise. Mama told Mr. Morris that she did not intend he should annoy papa any longer about the policy; that he knew it was her policy and had been assigned to her by his dictation and she did not intend to make any compromise at any price. Mr. Morris said yes, he knew it was mama's policy, but that she had better accept the company's offer than not to get anything, for the company would not carry it any longer. Mr. Morris and Judge Edwards then left.

* * * * *

Int. 1. State whether or not you were present at a conversation between your mother and Mr. Wm. W. Morris about surrendering the policy on the life of Mr. Harvison, on an accasion at Dr. Cook's house on Jefferson street, when Mr. Morris stood

in the hall at the foot of the stairs and your mother at the top of the stairs, on the second floor. If so, what was said by both Mrs. Cook and Mr. Morris, and who was present?

Ans. Yes, sir; I was present at that time. Mr. Morris rang the bell and came in, and mama hollowed down to know who it was. Mr. Morris said it was he; he asked mama if papa was in, and she said no he was not; he wanted to know what time papa would be back; mama replied that she did not know what time he would be back, and asked him if he had come to see papa about that policy; he said he had, and mama said if that was what he wanted to see papa about he need not wait to see him; that he knew that policy was hers and had been assigned to her; he said yes he knew that; he said that if she did not let papa give up the policy the company would cancel it, and said she had better take a half-loaf than nothing, and that if the company cancelled it she would never get anything; that was all the conversation about the policy; my aunt, mama, and I were present.

11.

Mrs. L. L. Hickman's Deposition, p. 72 (Pr. Rec.)

3. State whether or not while at Dr. Cook's house, during that month you heard a conversation between the complainant, Mrs. Cook, and Wm. W. Morris concerning the surrender of a policy on the life of Wm. G. Harvison, on an occasion when Wm. W. Morris was at the foot of the stairs and Mrs. Cook was at the head of the stairs, on the second floor; and if so, state what was said by both of them on that occasion and any circumstance that fixes the occasion in your mind.

Ans. Yes. Mr. Morris came into Dr. Cook's and hollowed up to Mrs. Cook to know where Dr. Cook was. She then wanted to know what he wanted to see the doctor about. He told her he wanted to see Dr. Cook about giving up the policy. She told him she did not think it would be worth while for him to see the Doctor, as she did not intend he should give it up; that

it belonged to her and had been assigned to her, and he knew it. He said yes he knew that, but that she had better take [a] half-loaf than nothing; that the company would cancel the policy and she would get nothing; that was all about the policy. My little boy was quite ill with measles and pneumonia. Mr. Morris said he could sympathize with us; he had had sickness in his own family.

4. Where were you when that conversation took place, and who else was present with you?

Ans. I was in the hall at the top of the steps and Mamie Roberts was present.

12.

Deposition of Dr. H. C. Miller, p. 63 (Pr. Rec.)

Int. 1. What is your profession, and how long have you been engaged in the practice, and what position do you hold in Louisville?

Ans. I am a physician; have been practicing for the last 18 years. I am coroner of Jefferson county.

2. State whether or not on the 26th of August, 1880, you, as physician, attended and took part in post-mortem examination of W. G. Harvison, deceased, at the office of J. C. King, undertaker, in Louisville.

Ans. I did.

3. Please name what other physicians attended and took part in the post-mortem examination, and state in this connection who made the dissection.

Ans. There were Drs. C. B. Blackburn, G. W. Ronald, L. J. Frazee, and A. B. Cook. I made the principal portion of the dissection, assisted somewhat by Dr. Blackburn.

4. What was the internal condition of Mr. Harvison and the cause of his death, as developed by the autopsy?

Ans. Well, sir, in the thoracic cavity we found the upper lobe of the left lung hepatized or consolidated, also an extensive effusion of bloody cerum in the left pleuritic cavity; also com-

plete hepatization of the right lung with extensive adhesion of the right pleura: also, we found an extensive fibrinous clot attached to the corda tendineæ of the tricuspid valve, the right auricular ventricular opening, this clot extending into the mouth of the pulmonary artery, stopping up the opening of that vessel; found the stomach, liver, intestines, and kidneys in a healthy condition. The cause of his death, as developed by the autopsy, was this fibrinous clot, superinduced by pneumonia

5. Did you understand from his condition that he had lately been afflicted with pneumania?

Ans. Yes, sir.

6. Did you know him in his lifetime or attend him as a physician?

Ans. No, sir; never saw him till the autopsy that I know of.

7. Where the habit of drinking spirit-ous liquors conduces to cause or causes disease what organs are most usually attacked?

Ans. The liver and stomach; frequently the kidneys.

8. From your knowledge of medicine and the effect of drinking upon the human system, and from the knowledge you acquired of Mr. Harvison's condition from the autopsy, was or not his death, in your opinion, caused directly or indirectly, proximately or remotely by the habit of drinking spirit-ous liquors?

Ans. I could find no evidence to that effect from the autopsy.

9. If Harvison had drank spirit-ous liquors to the extent of injuring his health and causing disease would the condition of his stomach, liver, or kidneys have developed that fact in the autopsy?

Ans. It would have been very apt to have shown some evidence in one or the other of those organs, if not all.

10. Is it or not a fact that where a person drinks spirit-ous liquors to excess and to the extent of producing disease in the system that either the liver, stomach, or kidneys always shows disease?

Ans. Yes, sir.

13.

John A. Harvison's deposition taken in behalf of Appellee, p. 93 (Pr. Rec.)

Cross-examination of same witness on behalf of complainant without waiving exceptions and objections:

X Int. 1. Was not Wm. W. Morris, the general agent of the Phœnix Mutual Life Ins Co. of Hartford, Conn., for the State of Kentucky, on familiar terms of acquaintanceship with your father, and one of his associates during the period of time inquired about in the direct examination, and were not your father's habits of drinking during that period known to Mr. Morris?

Ans. He was an acquaintance, but I don't know that they were what I would call associates. They were frequently together. I think my father's habits of drinking during that period were known to Mr. Morris. * * *

4. Where were you during the year 1872?

Ans. In Louisville, Ky. * * *

6. Were you in the store with your father during that year?

Ans. I was.

7. During that year, while you were there with your father in the store, was he an habitual drinker to excess, or to what extent did he drink spirituous liquors then?

Ans. He was not an habitual drinker to excess; he drank moderately.

8. How long after that was it that he began to drink to excess?

Ans. Well, from about that period, as far as I know, to 1877.

9. Do you mean that he drank regularly and daily to excess, or that he would occasionally take too much liquor?

Ans. Not daily to excess—only occasionally.

10. Did his drinking affect his health or constitution?

Ans. Not as far as I know of.

11. Was his habit of drinking occasionally to excess so pro-

plete hepatization of the right lung with extensive adhesion of the right pleura: also, we found an extensive fibrinous clot attached to the corda tendineæ of the tricuspid valve, the right auricular ventricular opening, this clot extending into the mouth of the pulmonary artery, stopping up the opening of that vessel; found the stomach, liver, intestines, and kidneys in a healthy condition. The cause of his death, as developed by the autopsy, was this fibrinous clot, superinduced by pneumonia

5. Did you understand from his condition that he had lately been afflicted with pneumania?

Ans. Yes, sir.

6. Did you know him in his lifetime or attend him as a physician?

Ans. No, sir; never saw him till the autopsy that I know of.

7. Where the habit of drinking spirit-ous liquors conduces to cause or causes disease what organs are most usually attacked?

Ans. The liver and stomach; frequently the kidneys.

8. From your knowledge of medicine and the effect of drinking upon the human system, and from the knowledge you acquired of Mr. Harvison's condition from the autopsy, was or not his death, in your opinion, caused directly or indirectly, proximately or remotely by the habit of drinking spirit-ous liquors?

Ans. I could find no evidence to that effect from the autopsy.

9. If Harvison had drank spirit-ous liquors to the extent of injuring his health and causing disease would the condition of his stomach, liver, or kidneys have developed that fact in the autopsy?

Ans. It would have been very apt to have shown some evidence in one or the other of those organs, if not all.

10. Is it or not a fact that where a person drinks spirit-ous liquors to excess and to the extent of producing disease in the system that either the liver, stomach, or kidneys always shows disease?

Ans. Yes, sir.

13.

John A. Harvison's deposition taken in behalf of Appellee, p. 93 (Pr. Rec.)

Cross-examination of same witness on behalf of complainant without waiving exceptions and objections:

X Int. 1. Was not Wm. W. Morris, the general agent of the Phœnix Mutual Life Ins Co. of Hartford, Conn., for the State of Kentucky, on familiar terms of acquaintanceship with your father, and one of his associates during the period of time inquired about in the direct examination, and were not your father's habits of drinking during that period known to Mr. Morris?

Ans. He was an acquaintance, but I don't know that they were what I would call associates. They were frequently together. I think my father's habits of drinking during that period were known to Mr. Morris. * * *

4. Where were you during the year 1872?

Ans. In Louisville, Ky. * * *

6. Were you in the store with your father during that year?

Ans. I was.

7. During that year, while you were there with your father in the store, was he an habitual drinker to excess, or to what extent did he drink spirituous liquors then?

Ans. He was not an habitual drinker to excess; he drank moderately.

8. How long after that was it that he began to drink to excess?

Ans. Well, from about that period, as far as I know, to 1877.

9. Do you mean that he drank regularly and daily to excess, or that he would occasionally take too much liquor?

Ans. Not daily to excess—only occasionally.

10. Did his drinking affect his health or constitution?

Ans. Not as far as I know of.

11. Was his habit of drinking occasionally to excess so pro-

nounced as to be observable by his acquaintances and associates as well as yourself?

Ans. I think it was.

12. During what period of time did your father have a desk in the office of Mr. Wm. W. Morris, the agent of the Phœnix Mutual Life Insurance Co., or occupy that office with Mr. Morris?

Ans. I cannot recollect.

13. Was it before or after 1872, or during the year 1872?

Ans. I think it was during the year 1872 or very soon afterwards, as near as I can recollect.

14. How long did he occupy the office with Mr. Morris?

Ans. Can't recollect exactly how long; think from two to four months. * * *

17. During that time, while your father was occuping the office with Morris, was he given to the occasional habit of drinking to excess, about which you have spoken?

Ans. Yes, sir.

14.

Cross-Examination of W. W. Morris for Appellant, pp. 117–118 (Pr. Rec.); Exhibit W. W. M., 3, pp. 130–131, and W. W. M., 5, p. 134, (Pr. Rec).

Look at the application now shown you, marked "W. W. M. 3," and state whether or not you wrote the answers to questions in that application; and if so, for what purpose.

Ans. I did not write them.

126. Do you say those answers are not in your handwriting?

Ans. I say that nothing in this paper is in my handwriting.

127. In whose handwriting are the answers and written part of that paper?

Ans. I do not know.

128. Did you ever see that paper before?

Ans. I do not remember ever to have seen this paper before.

A paper, or one similar to this, was sent to me from the office of the Phœnix Mutual Life Insurance Co. of Hartford. This may be the one, but it is certainly not in my handwriting or any part of it.

129. Was the application that you received from the office at Hartford, Conn., filled up with written answers to to the questions therein when you received it from the home office?

Ans. Yes.

130. What did you do with it?

Ans. I think I sent it to Mr. Harvison for his signature and medical examination.

131. Look at the envelope now shown you marked "W. W. M., No. 4," & state whether the address thereon, "W. G. Harvison, Esq., East Liverpool, Ohio," is in your handwriting, and whether you sent the application you have spoken of to him at that place?

Ans. This envelope is directed in my handwriting. I am not sure that I sent the application to him at that place.

132. When you sent the application to Mr. Harvison to be signed by him, did you enclose a letter in the same envelope to him?

Ans. I did.

133. Look at the letter now shown you marked "W. W. M., 5," and state whether that is the letter you sent with the application to Mr. Harvison.

Ans. This letter is in my handwriting and was sent with some application I presume that is the one.

134. Have you any doubt of this being the same application you sent with the letter?

Ans. No; I think that is the one. I received but one from the company and I sent the one I received. * *

136. Didn't you in your letter request Mr. Harvison to sign that application as it was filled up at the home office in order that your company might put half the risk it carried on his life

upon the Ætna Insurance Company of Hartford, Connecticut?

Ans. The letter is made part of my deposition and will show for itself. What I said is in the letter. I can't answer the question further than the letter shows, which I file as part of my deposition, marked "W. W. M., 5."

137. Will you please also file the envelope "W. W. M., 4," and the application "W. W. M., 3," also as part of your deposition?

Ans. Yes; I file them as part of my deposition. * *

EXHIBIT "W. W. M., 3."

Ætna Life Insurance Co. of Hartford, Conn.

I, William G. Harvison, of Louisville, county of Jefferson, State of Kentucky, being desirous of effecting an assurance with the Ætna Life Insurance Company in the sum of —— dollars upon *my* life of ——, of —— county of ——, State of —— during the renewable term of ten years, do hereby declare and warrant that my age next birthday will be fifty-eight years; that I am now in good health, of sound body and mind, and do usually enjoy good health, and that the following answers and statements are correct and true, in which I have not concealed, withheld, or misrepresented any material circumstances in relation to the past or present state of my health, habits of life, or condition which may render an assurance on my life more than usually hazardous, or with which the directors of said company ought to be made acquainted.

And I, J. M. Holcombe, sec'y, do hereby declare that the Phœnix Mutual Life Insurance Company has an interest in the life of the said Wm. G. Harvison to the full amount of the said sum of ——dollars.

And we do hereby agree and warrant that the answers given to the following questions and the accompanying statements are true. * * * * *

1. What is the name, residence, and occupation of the party whose life is proposed to be insured? Give Christian name in full and plainly written.

William G. Harvison; Louisville, Ky.; merchant.

5. Is the party whose life is to be assured married? No.

* * * * * *

EXHIBIT "W. W. M., 5."

LOUISVILLE, *Dec.* 29, 1877.

W. G. Harvison, Esq., East Liverpool, Ohio.

DEAR SIR: Will you be good enough to sign the enclosed application and be examined by a good physician (whose fee I will pay), and return the same to me? Our Co. desires to re-insure its risks above a certain amount, and if you will do this I shall be obliged.

Would be glad to hear from you occasionally as a friend.

Yours truly,

W. W. MORRIS.

120-80

Supreme Court of the United States

OCTOBER TERM 1886.

No. 125.

FANNIE M. COOK, Appellant,

vs.

THE PHŒNIX MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT.

Appeal from the United States Circuit Court for the District of Kentucky.

BRIEF FOR THE APPELLANT,

BY

SHELLABARGER & WILSON,
Of Counsel.

Thomas McGill & Co., Law Printers, Washington, D. C.

Supreme Court of the United States.

October Term 1886.—No. 125.

FANNIE M. COOK, APPELLANT,

vs.

THE PHŒNIX MUTUAL LIFE INSURANCE COMPANY, OF HARTFORD, CONNECTICUT, APPELLEE.

Appeal from the Circuit Court of the United States for the District of Kentucky.

Brief on Behalf of Appellant.

This suit was commenced in Jefferson County Court of Common Pleas by the plaintiff below, the appellant here, Fannie M. Cook, against the insurance company, appellee, and is based on the policy of insurance by said company on the life of William G. Harvison, which is "Exhibit PPP" in defendant's answer, (R., 24, 25,) being dated August 27th, 1872, and upon the assignment by Dr. A. B. Cook, the beneficiary and creditor named in the policy, which assignment is dated the 19th of September, 1872, (R., 4,) certifying that the policy was taken out for the benefit of Fannie M. Cook, and assigning the same to her; and the petition asks a judgment for $17,340, with interest from the 1st of January, 1881.

The petition avers that Harvison died at Louisville, Kentucky, on the 25th of August, 1880. (R., 2, fol. 5.)

Subpœna was served upon W. W. Morris, general agent of the company, on the 8th of March, 1881. (R., 8.) This service was quashed on motion of defendant, (R., 8, fol. 20,) and, upon petition of defendant, the case was transferred to the Circuit Court of the United States for the District of Kentucky. (R., 8, 9.)

The motion to remove was based upon citizenship in different States. (R., 10.) A demurrer was filed, by the defendant, to the petition, on the ground of want of jurisdiction of the subject-matter; that A. B. Cook, the assignor of the policy, was not made a party, and that the petition did not state facts constituting a cause of action, which demurrer was sustained on the 1st of November, 1881, on the ground that the remedy of the assignee was in equity, (R., 12,) and the plaintiff was required to replead in equity.

On the 15th of November, 1881, the plaintiff filed, in the Circuit Court, her bill in equity. The substance of its averments are:

1. That A. B. Cook, August 27th, 1872, made the contract of insurance through the general agent of the company for Kentucky, being policy 66,488, to take effect when countersigned by said agent, W. W. Morris, and which was countersigned by Morris August 27th, 1872.

2. That by said policy there was assured to said A. B. Cook, and his "*assigns*," on the life of said Harvison, a debtor of said A. B. Cook, $20,000, for the term of Harvison's life; that a copy of policy could not be filed with the petition, because in possession of said company, and asked its production and filing—policy payable ninety days after notice and proof of death of Harvison; that the terms of the contract were kept by said Cook and his "assigns;" that said Harvison died August 25th, 1880, of

which due notice was given to defendant; that on the 10th of January, 1881, more than ninety days after notice and proof of death, she demanded of defendant, at the office in Hartford, the payment of said $17,340, being amount due plaintiff as assignee and owner of policy, and company had refused to pay.

3. That the policy was taken on the life of said A. B. Cook's debtor, Harvison, for sole benefit of plaintiff, as was well known to company at the time of issuing policy; that, September 19th, 1872, after delivery of policy to A. B. Cook, A. B. Cook, with the knowledge of company, and to carry out said purpose, delivered to plaintiff an assignment, which is set out; (R., 14;) that by this assignment, made part of petition, A. B. Cook parted with his interest in the policy and appointed the said sum, named in policy, to be the separate estate of plaintiff.

4. Prays judgment for $17,340, with interest from January 1, 1881.

A. B. Cook accepted service of the writ of subpœna. (R., 16.) The company answered on the 19th of December, 1881. (R., 16 to 29, inclusive.)

A. B. Cook filed his answer January 24th, 1882. (R., 30 to 32, inclusive.)

The substance of the answer of the company is that it relies upon the following as defenses:

1. That the complainant was not the assignee or owner of the policy, and it was not taken out for her benefit.

2. That answer 10 in the application, (R., 26, fol. 69,) as to Harvison's habit of drinking, was fraudulent and false, and vitiated the policy, because, at date of policy, the answer to question 10 in the application was false and fradulent.

3. That Harvison's habit of intemperance changed, and that he became an habitual drinker, which increased the risk, and vitiated the policy.

4. That the defendant, on the 14th of June, 1880, (R., 21,) bought the policy of A. B. Cook for $4,000, and took an assignment thereof, set out in the answer.

A replication was filed by complainant. (See R., 30.) The evidence is fully set forth in the record, and on the 25th of July, 1883, the Circuit Court dismissed the bill, and an appeal was applied for and granted. (R., 33.)

Such is, in substance, the case.

The court, in deciding this case and dismissing the bill, gave no opinion or intimation, either oral or written, in regard to the grounds of the decree dismissing the bill; and, in assigning errors upon this record, we are without the means of making any assignments, except such as are furnished by the face of the decree; and the assignments can, therefore, so far as they are not provisional or conjectural, be only of the most general description.

Assignments of Error.

1. The court erred in dismissing the bill of the complainant.

2. The court erred in finding the policy of insurance upon which the bill was based to be invalid.

3. The court erred in finding that the said policy had, for any reason, been forfeited.

4. The court erred in failing to find that the said A. B. Cook and his assigns fully kept and performed the terms and conditions of the said policy on their part.

5. The court erred in failing to find that the complainant was the owner, in equity, of the said policy, and of the moneys therein stipulated to be paid, in her own right.

6. The court erred in finding that the said A. B. Cook did, or could, by the assignment to the said defendant company of June 14th, 1880, (R., 21,) affect or extinguish the rights of the complainant as held by her, under the assignment set forth in her petition, of the 19th of September, 1872. (R., 14.)

7. The court erred in finding that there was nothing due to the complainant under and upon the facts disclosed by the pleadings and evidence.

8. The court erred in failing to render a decree in favor of the complainant, as prayed in her bill in equity.

Brief and Argument for Appellant.

We now turn to a consideration of the facts established by the preponderance of the evidence in the record.

It will be seen by an examination of the pleadings and the evidence that one of the main questions of fact in the case was as to whether the answer to question 10 (R., 26, fol. 69) in the application of Harvison and Cook, of the 15th of August, 1872, was false and fraudulent, as charged in the defendant's answer. That question and answer are in these words:

"Is the party addicted to the habitual use of spirituous liquors or opium?" "No."

The testimony in regard to the habits of Harvison at the date of this application, to wit, August 15th, 1872, may be condensedly stated as follows:

Dr. A. B. Cook (Ans. 31, R., 38) says "he was not ad-

dicted to drinking in 1872, when the policy was taken out. If he was addicted to drink, I did not know it."

The other witnesses for the complainant did know Harvison at the date of the policy, and do not testify as to his habits at that time.

The defendant took the deposition of John A. Harvison, (R., 92,) who had been a witness for his mother in procuring the divorce, to establish his addictedness to the use of spirituous liquors at the date of the policy.

He, in substance, disproves the said fact sought to be proved in this regard by the defendant.

The substance of his testimony on this point is as follows:

In answer to question 4, (R., 92,) he says:

"Well, for three years previous to his death I saw very little of him, and don't know much about it. I don't know what his habits were. For the seven years previous to the last three years of his life he was in the habit of *occasionally* using spirituous liquors to excess. *Prior to August 31st*, 1872, he used spirituous liquors *very moderately*."

The fifth question and answer (R., 92) are:

"Q. State whether or not he drank spirituous liquors regularly and as a habit, or was intemperate for fifteen or twenty years before September, 1877.

"A. For about ten years previous to that date he drank pretty regularly as a habit, but previous to that period he was a very moderate drinker; he used liquors in moderation."

In answer to question 6, (R., 93,) he says he was in the store with his father *during the year* 1872.

In answer to question 7, asking his father's habits *while he was in the store with him*, as to drinking to excess, he answers:

"He was *not* an habitual drinker to excess; he drank moderately.

"Q. 8. (R., 93.) How long after that was it that he began to drink to excess?

"A. *Well*, from *about* that period, as far as I know, to 1877."

In answer to question 13, (R., 94,) asking when it was that Harvison had his desk in the office of William W. Morris, the agent of defendant, he answers:

"I think it was *during the year* 1872, or very soon afterwards, as near as I can recollect."

In the next question, asking how long Harvison occupied the office with said Morris, he answers:

"I cannot recollect exactly how long. Think from two to four months."

In answer to question 1, on cross-examination, (R., 93,) asking whether said Morris was acquainted with Harvison's habits as to drinking during the period covered by the examination-in-chief, he says:

"He was an acquaintance; but I don't know that they were what I would call associates. They were *frequently* together. I think my father's habits of drinking during that period *were known to Mr. Morris.*"

This is the William W. Morris, agent of the company, who procured the policy to be taken, and he was examined at great length as a witness for the defendant. (R., 94.)

He admits that Harvison *had a desk in his office* for two or three months. (See A. 50, R., 102.)

Without repeating the testimony, *in extenso*, in regard to the *knowledge* which Morris had, in 1872, of Harvison, it appears from that testimony that no one was better acquainted with him, probably, outside of his family, than Morris; and in his letter of December 29th, 1877, (R., 134,) and which inclosed to Harvison, at Liverpool, Ohio, an application to the Ætna Life Insurance Company, being "Exhibit W. W. M. 3," (R., 130,) he concludes the letter in these words:

"I would be *glad* to hear from you occasionally as a *friend.*"

Now, this "friend" and office companion of Harvison testifies, as to his habits of drinking, in answer to question 43 (R., 100):

"Dr. Cook never stated to me that Harvison was in the habit of drinking, and I never *knew or heard of his intemperate habits* until having seen the papers in the court in reference to the divorce, I think in the fall of 1879."

Then this same witness, Morris, (Q. and A. 98, R., 114,) testifies as follows:

"Q. If Mr. Harvison had the habit of drinking to excess at the time the application was made, was not your knowledge of him such that *you would have known it?*
"A. I SHOULD THINK SO."

By examining questions and answers on page 118, the court will find the history of the Ætna application marked "Exhibit W. W. M. 3." (R., 130; also R, 118, Q. 133.)

On page 118 it will be seen that Morris wrote the letter of December 29th, 1877, (R., 134,) and admits the contents of that letter to be his, and that he *requests* Harvison to sign *that* application, and that the Phœnix company was desirous of reducing its risk on Harvison's life, and to get ten thousand dollars of it upon the Ætna company; and that this application was filled up by *somebody* in the interest of the Phœnix company, and was forwarded to Harvison at Liverpool by Morris, as per said letter of Morris. (R., 134.)

Now, it will be seen, by inspecting this "Exhibit W. W. M. 3, that Mr. Morris forwarded questions and answers 5 and 6, (R., 131, fol. 370,) which read as follows:

"Are the habits of the party *sober and temperate?*
"*Yes.*
"Has the party even been addicted to the excessive or

intemperate use of any alcoholic stimulants or opium, or does he use any of them often or daily?

"*No.*"

The point of this reference to this testimony of Morris and these exhibits now is this:

That, in 1872, either Harvison's habits, as to the use of liquors, were wholly unobjectionable, *or else* this witness would at that time, during a part of which he was a fellow in the office, have known of his intemperance. He so expressly swears himself. (Ans. to Q. 98, R., 114.) We shall have occason to notice, under another head, the question of fact as to whether, after 1872, Morris did not come to know more about the subsequently-acquired habits, as to drinking, of Harvison than he is willing to confess. The point *now* is simply that it is impossible, in view of the testimony stated, to deny that, in 1872, his drinking habits were unobjectionable, and that answer to question 10 in the application (R., 26) was true.

MAKING OF THE ASSIGNMENT OF A. B. COOK TO THE COMPLAINANT AND KNOWLEDGE THEREOF BY DEFENDANT'S AGENTS.

We now turn to what may prove to be the most important questions of fact in the case, namely, the questions whether the assignment of the 19th of September, 1882, to Mrs. Cook, by her husband, (R., 4,) was in fact made; and whether the defendant's agents had knowledge of the existence of this assignment *before* the time of the purchase by the company of the policy of June 14th, 1880. (R., 21.)

We will consider *together* the testimony as to the making and delivery of the assignment, and as to the knowledge, by said agents of defendant, of the existence of the assignment prior to June 14th, 1880. We consider the two

questions of fact together, because the testimony in regard to these two facts is largely intermingled.

The assignment was in writing, is set forth *in hæc verba*, (R., 4,) and its making and delivery are averred in the pleadings both of the complainant and of A. B. Cook. A. B. Cook testifies to its making, and to its delivery to his wife, at the time of its date.

In answer to question 5, (R., 34,) he testifies in substance that, when the application for the policy was made, he informed Morris, the agent who solicited the application, that the policy was taken out for the separate benefit of his wife; that when the application, "Exhibit Q Q Q," (R., 25, 27,) was presented to him, which had been filled up by Morris, he asked why his wife's name did not appear in it as beneficiary, as it was taken out for her benefit, and that the agent answered that it must be in the name of A. B. Cook, because he, and not his wife, was the creditor of Harvison, and that he could assign it to his wife.

In answer to question 8, (R., 34,) asking whether he executed the said asssignment of the 19th of September, he answers:

"I did, and delivered the same and the policy to my wife on the same day."

He then proceeds to give a full and detailed account of its delivery to his wife, her possession of it, how it was kept in Garland's safe at the drug store, &c.

At folio 96 (R., 35, 36) he explains the circumstances under which the company procured the assignment of June 14th, 1880, (R., 21,) to the company; that it was done by means of the harrassments to which he was subjected by Goodale, the agent of defendant, that procured that transfer, and of the general agent, Morris.

He testifies, folio 96:

"I had informed Dr. Goodale that the policy belonged to my wife; that it was her property, and that I could not make any settlement."

He proceeds to state how Goodale persisted in his harrassments, and his threats of bringing suit, after the doctor requested him to leave off his visits.

At folio 97 (R., 36) he testifies:

"In *all* the interviews at which my wife was present she *positively* and *firmly protested* against the surrender of the policy. In an interview before the last one she told Dr. Goodale she would *never consent* to give up the policy; that it was *her property*, and that Mr. Morris had instructed her why it was necessary to have the assignment a separate paper. Dr. Goodale requested her to consider the matter. She replied she would *never change* her mind; that she *was firm as a rock.* At the *last* interview she protested *violently* against the surrender of the policy. She told Dr. Goodale that I was in no condition to transact important business. Dr. Goodale curtly said that if she did not think her husband competent to transact business she had better *get a divorce.* She *warned* Dr. Goodale against taking the policy; that if he did it was at his *own risk;* that she would hold company responsible *for the full amount of the policy.*"

At bottom of page 36 he states:

"He then said he had come to get the policy, and demanded that I should give it up, or *he would sue* me for surrender. My wife again *warned* him of the consequences; that he took it with his *eyes open* and against her protest."

In answer to question 21, (R., 37,) asking whether, after September 19th, 1872, complainant ever surrendered or returned the assignment or the policy to her husband, he answers, "She did not."

In answer 3 of the second deposition of A. B. Cook (R., 49) he testifies:

"I said to Morris, I came to tell him I would not settle; that the policy *belonged* to Mrs. Cook, and I *could make*

no settlement; Mrs. Cook then said to Morris, the policy had been *assigned to her*, and he knew it; that the company had *heard* that Harvison was very *sick* and about to die, and pretended to put it on the plea of *drinking*, and cheat her out of the policy; and that it was a very unprincipled thing in him to try to defraud her out of the policy."

This is the substance of Dr. Cook's testimony as to the assignment, and as to the agent's knowledge thereof.

J. W. Edwards, a lawyer, and counsel for Dr. Cook, was examined as a witness for complainant. (R., 56.) He was present at several interviews between Goodale and Dr. Cook, Morris, and Mrs. Cook. These interviews were all before the transfer of June 14th, 1880, to the company, (R., 21,) and were at various places. One interview of Cook and his attorney, Edwards, with Goodale, the man who procured the release of June 14th to the company, was at the Galt House. One was on Sixth street, between Jefferson and Maine. Two or more were in his own office. At one of the interviews, at Dr. Cook's office, Morris was present, and Mrs. Cook and her daughter also. (R., 56, fols. 151–153.) He (Edwards) testifies that, at the first interview, Goodale offered the doctor $1,500 for the sale and conveyance, to the company, of the policy. (Fol. 154.) He says that in subsequent interviews the agent, Morris, was in negotiation for the purchase and surrender of the policy, Morris continuing to act in this respect "on behalf of the company, and he representing the company." (See answer to question 7 R., 57).

On page 58, folios 156, 157, Mr. Edwards testifies as follows, in answer to a question asking what the complainant, Mrs. Cook, stated at the interview at Dr. Cook's office, while Dr. Cook, Mrs. Cook, and the agent, Morris, were having their interview on the subject of transferring the policy back to the company. He says:

"It is impossible for me now to state exactly what Mrs.

Cook said, but I remember she came into the office with her daughter, and in an EXCITED MANNER OPPOSED ANY SETTLEMENT OR ADJUSTMENT OF THE MATTER, CLAIMING THAT SHE OWNED THE POLICY; THAT IT HAD BEEN ASSIGNED TO HER."

In answer to question 10, asking whether Morris knew the policy was taken out for her benefit, he says:

"She *stated* that in *substance*. *She claimed the assignment had been made to her through the agency of Mr. Morris, as her friend, and she complained of his trying to adjust the matter contrary to her wishes.* The assignment was not produced."

In answer to question 4, on cross-examination, folio 160, Mr. Edwards, amongst other things, says, speaking of Mrs. Cook's interviews with him:

"She talked to me a great deal—not less than twenty interviews, I would suppose, though I would not fix the number. These interviews began from the time of my first interview at the Galt House until after I heard of the sale of the policy, but how long after I am unable to say. I have not had any interviews with her on that subject until within the last week. In all her interviews concerning the policy she *opposed my views* in regard to a compromise, and opposed Dr. Cook making the compromise."

In answer to question 10, (R., 60,) he describes the excited or angry interview which is spoken of by complainant's daughter, which we will presently notice. He testifies:

"Morris was excited before she came in—he and Dr. Cook both, to some extent—and her talk increased the excitement of Mr. Morris, I think, and my recollection is that Morris and I both got up and started, but I am not positive about this; he went one way and I the other."

Question 13 is as follows:

"Q. Your recollection is clear, is it not, that Mrs. Cook, at that interview, *opposed* settlement or adjustment of the matter?

"A. It *certainly is*, and at *every other* interview before the sale, *unless settlement was made with her.* She was determined to boss the job, as far as she gave any expression."

Question 15, folio 165:

"Q. Is your recollection so clear that you can say from memory, not refreshed from conversations of Mrs. Cook or her husband, that in that interview she stated before you left the room that she owned the policy?

"A. *I think it is*, except that I think she used the word *assigned or transferred.* I don't mean to be positive as to the exact word. My memory is *very distinct*, and I don't think that I *can* be mistaken that she said the policy *had been assigned to her.* But it is possible I might be mistaken on that point, though I think I am not, for I know she talked to me about it having been *assigned* to her repeatedly *before* and after that time."

Question and answer 16 (R., 61) are as follows:

"Was not what she said at that interview in substance that Dr. Cook had always said the money on that policy *should be* hers; had promised it to her? Can you distinguish what she said from this by memory?

"A. *I think I can;* indeed, my recollection is that *there was no question made as to the existence of that assignment at that interview, or any other, with me*, but she may have used the other language used in the question also."

Question 17 (R. 61):

Q. "What enables you to fix in your memory that Mrs. Cook said anything about an assignment or transfer in that interview?

"A. Nothing special, other than the *decided manner* in which she asserted her right to control the matter."

Question 20 (R., 61) is as follows:

Q. "Do you remember complainant telling you, after you knew she had engaged her counsel, that she had found an assignment of that policy, and was going to sue the company?

"A. I do not, with reference to that date, at all. I do recollect—at least I think I do—of her *bringing* me that assignment, and I think it was *before the sale*, but of this I am not positive; and I am sure she said all the time she would not submit to a settlement unless it was made to her."

Such is the substance of Judge Edwards' evidence regarding the existence of the assignment and the notice thereof to the agents, Morris and Goodale.

The daughter of the complainant, Miss Mamie Roberts, was examined for complainants. (R., 68.) She testifies that she was introduced to Dr. Goodale at her father's office in June, 1880. In answer 5 she states that she fixes the date as being "a year ago last June, because we had just returned from New York the day before Dr. Goodale came." She is asked to state what she may remember of the interview between *Dr. Goodale* and her father at her *father's office in June*, 1880, before the assignment of the policy back to the company. Touching what was said to Goodale on that occasion when he came to get the policy transferred to the company, she says:

"Mamma *told* Dr. Goodale that Mr. Harvison was not drinking at all; that he was ill from other disease, and the company had said nothing about settling the policy until they found that Mr. Harvison was about to die. Mamma *told* Dr. Goodale that papa had taken the policy out *for her* and *had assigned it to her*, and she would *not make any compromise whatever;* that the policy was taken out to be paid at Mr. Harvison's death, and she would certainly *never give it up until then*, when she could collect the full amount of the policy—at Mr. Harvison's death."

In answer to question 7 (R., 69) she testifies to being present at another conversation about the policy on the *following Monday* at her father's office, where were present her mother, her father, and *Dr. Goodale*. She testifies:

"Dr. Goodale told papa that he had come to get the policy, and that if he did not give it up that evening he

would *enter suit at once.* Mamma told Dr. Goodale that papa was sick, and was in no condition to transact business; that the policy *belonged to her*, and not to papa, and was taken out for her and been *assigned to her.* She *forbade* him taking it, and told him if he took it he *took it with his eyes open* and at his *own risk;* that she would make the company — her the full amount at Mr. Harvison's death. Dr. Goodale told mamma that if she could not trust papa to attend to business that she had *better get a divorce from him;* that he might awake some night and kill her, and that she had better go over and consult with her friend, Col. Mundy, who was insane upon the subject of life policies. Dr.Goodale still insisted upon papa giving up the policy, offering $2,500. *Papa told* Dr. Goodale that he *could not sell;* the policy *belonged to mamma*, and she would *not consent* to give it up. Dr. Goodale then told papa that he would give him $3,000 for the policy. Papa still refused. Dr. Goodale then became very *much excited*, and showed a good deal of temper, and said he would give papa $4,000; that he must have the policy, and if papa did not accept his offer *that evening that he would bring suit at once and compel him to give it up, and then he would get nothing.* Mamma still *protested* all the time, and said she would *never give up* that policy, and that she did not intend to be cheated out of if. Dr. Goodale then became more excited than ever, and *asked papa if mamma's name appeared on the policy.* Mamma replied that she had told Dr. Goodale why her name did not appear on the policy, because Mr. Wm. W. Morris said that papa would have to *assign it to mamma* on a separate paper, which he had done."

In answer to question 12, (R., 70,) touching another interview at her father's office before she had met Goodale, and when the witness met *Judge Edwards*, and the agent Morris, in her father's office, she is asked to state what occurred and was said on that occasion. She answers:

"Yes, sir; I was in papa's office at the time Mr. *Morris* and Judge *Edwards* came in. I think it was in February. I know it was in the winter time. When Mr. Morris came in he told papa that he would like to see him privately, looking at me as much as to order me out. Of course I

got up and went out, feeling very much hurt at the time. I met mamma coming down the steps as I came out of papa's office. I told her the way Mr. Morris looked at me and what he said to papa. She said that I should not be ordered out of papa's office, took me by the hand, said I should go back in the office with her. When mamma and I went in, we *found Mr. Morris in a dispute with papa about the policy.* Mr. Morris insisted that papa had promised to make the compromise. Mamma *told Mr. Morris* that she did not intend he should annoy papa any longer about the policy; that he *knew it was her policy, and had been assigned to her by his dictation, and she did not intend to make any compromise at any price.* Mr. Morris said *yes, he knew it was mamma's policy,* but that she had better accept the company's offer than not to get anything, for the company would not carry it any longer. Mr. Morris and Judge Edwards then left."

This witness gave a second deposition, (R., 71,) where she is asked about an interview between her mother and the *agent Morris* about surrendering the policy, which occurred at Dr. Cook's house on Jefferson street, when Morris *stood in the hall* at the foot of the stairs, and her mother at the top of the stairs on the second floor. She is asked to state what, if anything, occurred at that interview.

She says:

"A. Yes, sir; I was present at that time. Mr. Morris rang the bell and came in, and mamma hollowed down to know who it was. Mr. Morris said it was he; he asked mamma if papa was in, and she said no, he was not; he wanted to know what time papa would be back; mamma replied that she did not know what time he would be back, and asked him if he had come to see papa about that policy; he said he had, and mamma said if that was what he wanted to see papa about he need not wait to see him; *that he knew that policy was hers and had been assigned to her; he said yes, he knew that; he said that if she did not let papa give up the policy the company would cancel it, and said she*

had better take a half-loaf than nothing, and that if the company cancelled it she would never get anything; that was all the conversation about the policy; my aunt, mamma, and I were present."

This is the substance of this witness' testimony upon this point.

Mrs. L. L. Hickman's deposition was taken for the complainant. (R., 72.) She is asked in question 3, (R., 72, 73,) in substance, in regard to the interview on the stairs testified to by Miss Roberts. Her answer is as follows:

"Yes; Mr. Morris came into Dr. Cook's and hollowed up to Mrs. Cook to know where Dr. Cook was. She then wanted to know what he wanted to see the Doctor about. He told her he wanted to see Dr. Cook about giving up the policy. She told him she did not think it would be worth while for him to see the Doctor, as she did not intend he should give it up; that it belonged to her, and had been assigned to her, and he knew it. He said yes, he knew that, but that she had better take a half-loaf than nothing; that the company would cancel the policy, and she would get nothing; that was all about the policy. My little boy was quite ill with measles and pneumonia. Mr. Morris said he could sympathize with us; he had had sickness in his own family."

This is the substance of the testimony establishing the making of the assignment and the knowledge of its existence by the agents of the company prior to June 14th, 1880, with the exception of what will be noticed hereafter as we proceed.

The deposition of Dr. A. W. Goodale, the said agent who procured the assignment of the policy to the company, was taken for the defendant, (R., 75,) and also that of said agent, W. W. Morris. (R., 94.)

We need not enter into detail in regard to the testimony of these two witnesses upon this point, as they attempt, in substance, to deny the foregoing testimony regarding their

knowledge of this assignment, in detail and *in toto.* (See these denials by Dr. Goodale, R., 83 and 84, and the denials by the agent, Morris, R., 98 and 100.)

There are some features of the testimony of these two witnesses, bearing upon their credibility, which it becomes the duty of counsel to point out to the court.

Whilst we shall not attempt to go through the details of the evidence of these two witnesses, Goodale and Morris, we shall point out some features and specimens in their testimony which bring them within the maxim, *falsus in uno, falsus in omnibus*, and some transactions of theirs which show them so lacking in common integrity as to taint, with suspicion, all which they touch in this case.

The first thing we point to (as a mere specimen) is a *general* feature of Dr. Goodale's evidence, which extends *throughout* his deposition. It is that feature in which he seeks to establish the fact that, throughout all his struggles for the securement of the surrender of the policy, at most of which Mrs. Cook was present, she never threw out even an "*intimation*" that she had any interest in the policy or was objecting to its surrender. We will point out some of the places where he repeats this in exact substance.

Now, of this feature of his evidence we will show to the court that, not only by the overwhelming weight of the appellant's testimony is this evidence of Dr. Goodale deliberately false, but that it is proved false by parts of his own inadvertent admissions, and by much of the evidence of his colleague, Mr. Morris. To this we now proceed.

In answer to question 13 (R., 80) he represents Mrs. Cook as very amiable, the interview as very pleasant.

In answer to question 21, (R., 81,) asking whether the complainant did or said anything, after the doctor decided to accept the four thousand dollars, to insist or oppose its being surrendered, he says:

"She said nothing to oppose."

In answer to question 22, asking, in substance, whether Mrs. Cook said anything in opposition to her husband's selling, he says:

"I saw nothing to indicate anything of the kind. I did not have the *least intimation* from Dr. Cook or Mrs. Cook that she *claimed* to have *any* right over the policy; on the other hand, she told me that it *was Dr. Cook's policy*, but insisted that he had promised to give her some of the money derived from the policy after Harvison's death."

When we come to examine the testimony of Morris, it will be seen that, if Morris is to be believed on this point, this testimony regarding no claim by Mrs. Cook is another deliberate falsehood, which it is also shown to be by the detailed and circumstantial testimony of Judge Edwards, Mrs. Hickman, Miss Roberts, and Dr. Cook.

In Dr. Goodale's answer to question 39 (R., 84) he *inadvertently* admits a fact which contradicts his entire testimony in this regard, for he there admits that he did ask Mrs. Cook "*if her name appeared in the policy.*" *Such* a question would have been utterly senseless and uncalled for, if, as he says, no intimation was made, at any time, or indicated to him, that she claimed an interest in the policy. This question evidently was asked in denial of an assertion by Mrs. Cook that she had an interest in the policy.

Again, this witness is shown by his letter of November 25th, 1879, (R., 140,) to be dishonest and unworthy of belief in what he says regarding this policy. That letter shows him as attempting to conspire with his company to commit a most inexcusable fraud regarding the policy. After pronouncing a glowing eulogy upon his efforts to extinguish the policy in the early part of his letter, and in discussing what was the best "plan" to secure the destruction of the policy, he adds these words (bottom of page 140, top of page 141):

"My plan, however, would be *not to say a word* to Dr. Cook about this drinking, or about the policy, but *keep*

quiet, and allow it to lapse, and then it will be ended, and our *excuse for not notifying him of payment* will be that the policy was considered forfeited by reason of misrepresentations of habits in app., and the subsequent habits of the insured, the knowledge of which comes to the Co. during the year 1879."

He concludes the letter with this, towards himself, commendatory remark:

"I think yesterday *a good day's* work in Harvison case."

Comment upon the morality of this man and his letter can hardly be necessary, since morality and *law* both, *as we shall show* hereafter, make the "*plan*" he here recommends a base fraud upon the assured, and one which, if consummated, would have waived the payment of the premium. The law, as well as the universal usage, in regard to notifying the payments of premiums, and of lapse of policies, *requires the usual and customary notice of payments falling due to be made;* and the proposition here to omit the notice, and to set up an "excuse" for the omission, is simply a recommendation of a gross fraud. We will, in another connection, point to the discrediting features in Dr. Goodale's evidence.

The testimony of the agent, Morris, in regard to the existence of this assignment, and his notice thereof, is like that of Goodale in this feature of attempting, in certain parts thereof, to make general and sweeping denials of his knowledge of the alleged intemperate habits of Harvison, and also in regard to the existence, and his knowledge of the existence, of the assignment to the complainant. (See R., 98–100.)

Some circumstances are important to be called to the attention of the court regarding the general character of this witness' testimony, and his relations to the case. He was the party who procured the policy to be issued. He

was the party who *filled up the answers* in the application. He, as we have seen, was the office-mate, for a period in 1872, the year the policy was issued, of the insured Harvison.

He, as we have seen, was his "friend" and his companion. He swears that had Harvison been a drinking man in 1872 he would have known it. He was the man that filled up the answer to question 10. (R., 26.)

In answer to question 30, (R., 106, fol. 300,) where he is asked how many days Harvison signed the application after Dr. Cook signed it, he says:

"I cannot tell how many days after, or whether it was the same day. *I was very anxious to get the insurance*, and I don't think that was delayed very long."

These facts are pointed to here for the purpose of showing the eagerness of this agent to get this policy upon the life of a man who was his office companion and his "friend," and who swears that if he had been, in 1872, a drinking man he would have known it.

The bearing which this eagerness to get the policy in 1872 has upon his testimony *now*, in which *apparently* he seeks to make him a drunkard in 1872, is a bearing upon the question of his integrity, his moral qualities, his title to the respect and the confidence of the court as a witness. It presents him as a dishonest man either in 1872, when he procured the policy, and in 1877, when he wrote the letter "Exhibit W. W. M. 5," (R., 134,) and sought to have Harvison represent himself as a sober man, *or else* as a dishonest man at the date of his deposition in this case, in which he, apparently, is brought forward for the purpose, in part, of making Harvison appear to be a drunkard at the time that *he* procured to be made the said two applications for insurance, one to the Phœnix and the other to the Ætna.

Another feature of this witness' testimony is one in which he is exhibited as reluctantly admitting the claim-

ant's claim of an interest in, and right to, this policy at the interviews when he and Dr. Goodale were endeavoring to procure this assignment (R., 21,) to the company. His coadjutor, Dr. Goodale, we have seen, declares that, at these interviews, no "intimation," even, was given by Mrs. Cook that she had an interest in the policy. Her utmost hope and claim was that her husband would give her something out of it in the future.

Now, as tending to show that this is not true, we point to some features of the testimony of this agent, Mr. Morris, some of which also involve the integrity of Goodale.

In answer to question 63 (R., 110) he admits that Mrs. Cook asked him why her name did not appear in the policy. Why was this question asked, by Mrs. Cook, if this witness never heard any "intimation" that she pretended to have an interest in the policy, or to have the right to expect her name to appear there?

In answer to question 64 (R., 110) he admits that Mrs. Cook "*told me that the proceeds of the policy were to be hers.*" Why this, if, as testified to by Goodale and himself, they never heard an "intimation" that she had an interest in the policy?

In answer to question 67, (R., 110, 111,) asking whether he (Morris) explained to Mrs. Cook, or to her husband, how the assignment of the policy could be made, he answers:

"I did not to Dr. Cook. *I told Mrs. Cook that the assignment could be made for her benefit, and that I had blank forms of assignment in my office that I could furnish her at any time. These blank forms are issued by the company.*"

Why this, if Mrs. Cook never pretended to set up any present claim, and only *hoped* for a *future* gift?

In answer to question 73 (R., 111) he says:

"I advised her as to the manner of the assignment. *I*

do not pretend to say that Mrs. Cook did not at some time say that the policy was taken out for her benefit."

How does this answer correspond with the testimony, at other places, of this witness, and of Goodale, that they never heard an "intimation" that she had an interest in the policy?

In answer to question 81 (R., 112) he advised her, after Harvison's death, "that if the policy had been regularly assigned she had a claim for the full amount, notwithstanding its adjustment."

In answer to question 19 (R., 125, fol. 155) he says:

"At the office of Dr. Cook, Mrs. Cook *frequently stated, as I always understood it, that the proceeds of the policy, or the benefit of the policy, in the event of Mrs. Harvison's death, was to be hers.*"

But says that he "*understood*" this had reference to the future. Observe, he does not state that she *said* she only looked for a future interest.

He admits, in answer to question 3, re-cross-examination, (R., 127,) that he "explained to her that she had no insurable interest, and it was in answer to a question why I did not have the name inserted, as if I had authority in the matter."

Here again he is constrained to admit a *contention* that the complainant *had then an interest* in the policy, and that her name was, for that very reason, expected to have appeared in the policy, and he was driven to the explanation why he had not put her name in, to wit, *because she had no insurable interest.*

In answer to questions 6 and 9, on page 128, he describes Mrs. Cook as insisting upon his having her name in the policy, and her persistent solicitations, running through several months, to that effect. Why this, if she only hoped for a gift out of the proceeds after Harvison's death?

In answer to question 14 (R., 128) he says:

"Judging from the persistency, I should think it was more than twenty times that he was solicited to have her name in the policy."

This is all totally and violently repugnant to the testimony of Goodale, and parts of that by himself, that he never heard of any claim, by Mrs. Cook, of an ownership or interest in the policy.

Another position in which it is important to exhibit these two witnesses, Mr. Morris and Dr. Goodale, has light thrown upon it by the testimony of Dr. Blackburn, (R., 66,) where, speaking of a call upon himself, on Sunday, not long before Harvison's death, Morris and Goodale came to Dr. Blackburn's office, Dr. Blackburn being then the attending physician of Harvison. They asked the doctor Harvison's condition. He answered, "*I told him he could not live but a short time; that was about all that was said.*"

Then, in answer to question 12, folio 182, they asked him how long he would probably live, "*and I told them not long; if they wanted to get it*" [the release of the policy] "*they had better hurry up*, and they went out and said they were going up to see Harvison at the infirmary."

With this information in their possession, and their zeal thus stimulated to get the release quick, to "*hurry it up*," they proceeded with their work. The court will, we think, look in vain to the testimony to find any *intimation*, from either of these men, when they were getting this release and were "hurrying it up," made to Mrs. Cook or her husband, that they were "hurrying up" the release to the company under the assurance of Dr. Blackburn that Harvison was about to die. Indeed, it was probably *after* they got this advice from Dr. Blackburn that, in securing from Cook the alleged offer to release the policy, they pre-

tended to the Cooks not to know Harvison was even "sick," as appears by Morris' answer 46. (R., 101.)

In answer to question 87, (R., 113,) speaking of the very day when he (Morris) got this advice from Dr. Blackburn, and of what he had learned on the visit which Dr. Blackburn speaks of, he says:

"I was not led to believe that he was in his last illness. My impression is that he would get up again, but he was very seriously ill, according to their statement."

Now, this allegation that Dr. Blackburn so "led" him to believe, is a pure falsification, if Dr. Blackburn has not falsified. (R., 66.)

Again, in his answer to question 63, (p. 110,) he involves himself in a contradiction. The question is:

"Q. How came Mrs. Cook to ask you why her name did not appear in the policy as beneficiary?

"A. I don't think that I have anywhere said that Mrs. Cook asked me any such question. I *have* stated that Mrs. Cook asked me why I did not have her name appear in the policy, but why she asked it I don't know."

In the first part of the answer he seems to say that Mrs. Cook never asked him why her name did not appear on the policy, and that he had not said so. Then he adds that he had stated that Mrs. Cook did ask him that very question, to wit, "Why I did not have her name appear in the policy."

Another aspect in which this witness exhibits himself is seen in his answer to question 71, which reads: "You intentionally deceived her about it, then, did you?"—meaning deceiving her about his (the witness') promising to endeavor to get Dr. Cook to make an assignment of the policy to his wife. His answer to this question is, "Well, I reckon *I intentionally deceived her.* I reckon I wanted to get rid of her persistency."

There is much more in the testimony of these two wit-

nesses which will attract the attention of the court, and which it would not be useful here to enlarge upon. The testimony shows, as we, with all due charity and allowance for human infirmity, submit, that it is not only lacking in candor, and a spirit of fairness, but that the witnesses have testified with deliberate purpose to falsify in the respects which we have pointed out, and in many others.

But even if the testimony of these two witnesses were not of the character described, and had the ordinary indications of fairness, it would be simply preposterous to deny that the overwhelming preponderance of all the testimony, especially taking in view the disinterested testimony of Judge Edwards and Mrs. Hickman, is that this assignment was made at its date; was delivered as Dr. Cook testifies; that it was retained by Mrs. Cook, and that these agents of the company, prior to the assignment of June 14th, 1880, were repeatedly notified, warned, entreated, and pressed to desist from procuring the assignment, and that they took such assignment with full knowledge of her rights under the assignment to her of September 19th, 1872, and with the purpose of cutting off her rights under the policy, in defiance of her protests.

We have gone through this review of the evidence of the opposing parties relating to this point as to the agent's full and positive knowledge, at the date of the release of June 14th, (R., 21,) of the rights of Mrs. Cook, as assignee, *not* because we think, as a matter of law, that it is devolved on her to make proof of such knowledge, in order to defeat the release of June 14th. We shall, when we come to this law point, show that the *onus* is on the company to show that the company knew of no fact at the date of that release which put it even on inquiry regarding the matter of the then existence of an assignee of the policy.

Who Wrote, and When and Where, the Application "Q Q Q."

The circumstances relating to the preparation of the application for a life policy not unfrequently become material facts in cases like this, and are, in this case, made material by the averments of appellee's answer.

We, therefore, now point out the facts as to the preparation of defendant's "Exhibit QQQ," (R., 25,) and the circumstances connected with the preparation.

The facts are as follows:

1. Morris admits that he knew Harvison two or three years before the application was made, (R., 105, Ans. 17,) and that he had a "business acquaintance" with Harvison. (R., 105, Ans. 18.)

2. He admits Harvison had his desk in his (Morris') office for months, (R., 102, Ans. 50,) and this was in 1872. (R., 94, Ans. 13.)

3. He, as already remarked, says he knew Harvison so well that he thinks he would have known the fact had Harvison been intemperate in 1872. (R., 114, Ans. 98.)

4. The testimony of Dr. Cook shows Morris knew as much of Harvison's drinking as did the Doctor. (R., 45, Ans. 80.)

5. Morris, at time of the application, saw and regarded Harvison as an "excellent risk," (R., 114, Ans. 95,) as of unusually robust health and unusual strength, (R., 114, Ans. 96 and 97,) and as an active member of the church. (R. 106, Ans. 24.)

These facts, as to Morris' knowledge of Harvison, at date of the application, are material as bearing on the proposition that Harvison *was in fact* temperate in 1872; but they

are pointed to under the present head for a different purpose, to wit, to show the probability that Morris did what Dr. Cook swears he did do, (R., 37, Ans. 24 and 26,) to wit, *fill up the answers in the application in the absence of Dr. Cook, because he was conscious he knew as much about Harvison as did Dr. Cook.*

The next fact touching this application is, that it is admitted, by Morris, that he filled up the answers on blanks furnished by the company, and that he filled them up *in the absence of Harvison.* (R., 107, Ans. 33, 34, 36, 37; also R., 108, Ans. 44, 45, 46.) That the answers were written by Morris, he admits in the last-cited answers; that they were written in the *absence* of Harvison, he admits in answer 38, (R., 107,) but claims that they were written down in the presence of Cook, "*according to his recollection,*" and were afterwards shown to and signed by Harvison. (R., 107, Ans. 36.) He is positive that Harvison was not present when he wrote the answers, (R., 107, Ans. 38,) but only gives his "recollection" as to Dr. Cook's being present.

Now, Dr. Cook swears positively that he was not present when the application was filled up by Morris. (R., 37, Ans. 26.)

The following facts, therefore, are admitted by the company's agent and witness bearing upon and touching the answers in the application:

1. That Morris was the agent of the company at the date of this application.

2. That he regarded Harvison as an "excellent risk." (R., 114, Ans. 95.)

3. That he personally knew him years before the application. (R., 105, Ans. 17.)

4. That it was he who "sought" out Harvison to have him sign the application. (R., 106, Ans. 28.)

5. That his knowledge of Harvison was then such that had he been intemperate, he thinks he would have known the fact. (R., 114, Ans. 98.)

6. That he filled up the answers in the application. (R., 105 to 108.)

7. He admits Harvison was not present when he wrote the answers, (R., 107, Ans. 38,) and even, as to answer 28 contained in the application, he admits Harvison was not present when it was written. (R., 108, Ans. 46.)

8. As to Dr. Cook's being present at the writing of the answers, he can only swear to "recollection." (R., 107, Ans. 36.)

9. Morris was very "anxious" to get this risk. (R., 106, Ans. 30.)

These nine points are *admitted*. The *disputed* point is whether Dr. Cook testifies truly when he swears that Morris brought him the application *filled up*, and that the answers were not written in his presence. (R., 34, Ans. 5; R., 37, Ans. 24 and 25.)

Add to the nine admitted facts now pointed out the additional one that Morris was constantly handling these applications, that he had made hundreds of them, and that Dr. Cook never made another such in his life, and we submit that, even treating the witnesses as *equals* in integrity, the clear, if not conclusive, *preponderance* of the evidence is that these answers were written out by Morris in the absence of *both* Cook and Harvison, and that they were presented for signature and signed, on the request of Morris, in the way such policies are *usually procured* by "*anxious*" (R., 106) soliciting agents, and as is so truthfully described by this court in the cases we shall hereafter present.

The Knowledge of Morris as to Harvison's Drinking in 1877.

We now proceed to the question whether this agent, Mr. Morris, prior to his receipt of the annual premiums for 1878, 1879, and 1880, knew of the alleged intemperance into which Harvison had fallen after the date of the policy.

That he did so know, Dr. Cook swears most positively, *and swears with such details given as to make it impossible to disbelieve his evidence without attributing to him deliberate perjury.*

Take, for example, his answer 27. (R., 37, 38.) This answer is as follows:

"I did *offer* to surrender the policy for *cancelment* at the office of said general agent. My recollection is that it was in August, 1877, *at the time the annual premium was due.* For some time the insured, Wm. G. Harvison, had been drinking. In June, 1877, I saw a *notice in the newspaper* that the wife of the said assured had applied for a *divorce,* one of the complaints alleged being *drunkenness.* After reading said notice of application for divorce, I saw said general agent, W. W. Morris, *stated the fact,* and asked him if the *habits* of said insured would *not vitiate the policy.* Said general agent assured me that it would have *no effect* whatever on the policy; that the divorce would make no difference, and *advised* me by all means to *keep up the policy. I took the policy to said general agent's office at the time the annual premium was due, August,* 1877, *stating that the assured W. G. Harvison's habits had changed;* that he had left the city; that I was *afraid* I would have trouble about the policy, and did not wish to *pay any more money on it.* Said W. W. Morris again *advised me to pay the premium and keep the policy alive;* that it was a good investment, and the money *would be sure after* said W. G. Harvison's death. *I left the policy on his desk to be sent to the home office of the company.* During the day he sent a message to me, by my wife, requesting me to come to his office and *pay the premium on the policy.* I again visited his office; he

assured me that the divorce did not and could not affect the validity of the policy; that it was the best investment I could make. With these assurances *I paid the annual premium and kept the policy alive.*"

Then, again, question and answer 78 (R., 45) are:

"80. From whom did you first learn of Harvison's drinking?

"Ans. I saw him on the street. *Morris also informed me that he saw him drunk on the street, and that Harvison was about to fight him, Morris.*"

Then, again, question and answer 83 (R., 45) are:

"83. When and where did Morris tell you he saw Harvison drunk and about to fight him? Who were present when he told you this?

"Ans. It was in 1875 or 1876; I think it was on Main street; my wife was present."

Again, suppose that Harvison's habits had become anything approximating to one-half of the badness attributed in the description, of them, given by Dr. Goodale in his letter to the company of 27th November, 1879, (R., 140,) is it *conceivable* that this man, Mr. Morris, should be in total ignorance thereof? Can you so conceive him when he, concerning himself, swears that if Harvison had drank before the policy he would have known it; (R., 114, Ans. 98;) swears that he *saw him and had a law suit with him* at this period, about 1877; (R., 100, Ans. 44;) that he was his "friend," (R., 134,) and had taken a policy on his life. And, besides all this, it was Morris whose *duty it was to know and report to the company Harvison's habits!*

Then add to all these considerations an inspection of what he does and what he confesses in his answer to questions 110 and 111, (R., 115,) which are as follows:

"110. Didn't Dr. Cook, in 1877, come to you at your office and show you *this slip* cut from the newspaper, and

ask you if such fact, if true, would affect the policy? (Witness here shown slip referred to.)

"A. Dr. Cook *showed me a cut from a paper upon the steps of* his office, and at that time stated that Mr. Harvison had been divorced, *and asked me if that would have any effect upon the policy of insurance;* I did *not* read the paper; this is the first time I ever have read it, and it was never shown to me in my office.

"111. Is that the slip of paper he showed you?

"A. I do not know, but it is very like it; it was about that size; I think he took it from his pocket-book."

Notice, now, that the witness totally fails to say anything about what reply he made to question put about the effect of drinking on the policy. Then notice that he admits that the "slip" (see the "slip" and its charge of drunkenness, R., 116) was shown him in 1877. (See, also, Ans. 151, R., 120.) Then notice that he does not *deny* having answered the question that the divorce matter would not hurt the policy, as Dr. Cook said he did in answer 27, (R., 37,) although *called to rebut* Dr. Cook's evidence, and thus *admits* Dr. Cook's answer. Then notice that the *whole purpose* of this visit, with this slip, Morris confesses to have been to get *his advice and his action, based on the charge contained in that slip.* Then remember, also, that he procured a policy on the life of Harvison, and was *bound* to make frank and *honest* answer to the question asked regarding the effect of the divorce, and its cause, on the policy!

Observing these things, can it be conceived that *no one word* was uttered by Cook—no question put by Morris, no hint given by either—regarding either the point *what is in this slip,* then and there tendered for inspection, or as to what was the offense of Harvison, upon which the divorce was asked or granted? The truth is that such a thing is not to be believed, and is not true. The only thing in the life and condition of the assured, Harvison, which

did, or could, *unite* in itself the *two* qualities of being a statutory ground for divorce, *and* an element affecting the policy, was the matter of drinking. This Morris knew. Yet admitting, as he does, that Dr. Cook came there with a slip about the divorce—came asking him if the matter indicated in the divorce slip would hurt the policy, and came for *nothing* else—he would have the court believe that this *only and one* material thing in the slip, to wit, intemperance, was unnamed and unthought of, and that he sent Cook away induced to believe the policy unhurt, and induced to *continue paying premiums*. This story no court can believe. Not only all this, but still more. Cook went to Morris with the slip and the policy on purpose to surrender it, and to escape from further payments on it, provided he should learn from the agent that the facts disclosed in the slip would avoid the policy. This much even Morris, in effect, confesses in answer 110. R., 115.

In view of all this, we now most confidently submit, and will hereafter more fully show, that if Morris is even *believed* in saying that, *without knowing the grounds of the divorce*, he and his company proceeded to *take the premiums*, with the assurance to the beneficiary of the policy that what this divorce proceeding disclosed would not affect the policy, or if they FAILED TO EXAMINE THE SLIP AND TO NOTIFY THE BENEFICIARY THAT IT AVOIDED THE POLICY, then, and in *either* case, the company is *estopped* from setting up what that slip and the suit disclosed as a defense in this case. We shall presently see by the authority of this and all other courts that men, under the conditions confessed in said answer 110, are not *suffered* to shut their *eyes to tendered light*, then to go forward, in the cover and protection of the self-inflicted darkness, and persuade their victims that the divorce will do no hurt; that the policy is good; that the premiums may be safely paid; and thus *secure such payments* up to a time after death, and then,

after death, go into a court of equity and plead as their defense the criminal ignorance which came from shutting out light so tendered to them.

Recapitulation of Facts Established.

The facts clearly established in the case are the following:

1. The assignment to appellant, of 19th September, was made and delivered at its date.

2. W. W. Morris was, during the transactions named in the record, not only the general agent of the company in Kentucky, but was, also, expressly intrusted with the business of adjusting the questions regarding the validity of this policy. (See, amongst many others, answer 54, R., 103; company's letter to Morris, R., 142; company's letter to Cook, R., 146, &c.)

3. Goodale was, also, the agent of the company in the *very* matter of adjusting and deciding upon the rights of parties to this policy.

4. Both of said agents, at and before the execution of the assignment of June 14th, 1880, (R., 21,) by Dr. Cook to the company, had repeated, express, and full notice of said assignment to appellant of September 19th, 1880, and of her interest thereunder, and took said assignment, of June 14th, in *defiance* of her selemn protest against the taking thereof, and with notice that she would hold the company liable for the full amount of the policy.

5. At the date of the application for this policy, (August 15th, 1872,) the person insured was of temperate habits; not "addicted to the habitual use of spirituous liquors;" was of unusual strength and robust health, and a "most excellent risk."

6. Said application, of the 15th of August, 1872, was made on a printed form furnished to the agent, Morris, by the company. The answers therein were filled up by the said agent, Morris, in his own handwriting, in the absence of William G. Harvison, the assured, and in the absence of A. B. Cook, the original beneficiary, and was presented, by the said Morris, to the said Harvison and Cook, respectively, for their signatures, and was by them signed.

7. That said Harvison, at the time of the said application, was the "friend" and acquaintance of the said Morris. That said Harvison, about the time of the application, occupied, for several months, the office of the said Morris. That the said Morris was "very anxious" to obtain the said risk, and "sought for" the said Harvison to procure him to sign said application, and did procure his signature thereto.

8. That after said policy was issued the habits of said Harvison, as to the use of intoxicating spirits, were changed, he becoming, at times, intemperate, and this fact became known to the said agent, Morris, at least as early as 1877, at which time said A. B. Cook took to said Morris the newspaper slip relating to a divorce by the wife of said Harvison from him, on the ground of intemperance, a copy of which slip is set forth in the Record at page 116; and said A. B. Cook then and there showed him the said slip, told him that said Harvison had become intemperate since the date of the policy, expressed his determination to surrender the policy and to cease paying premiums if this change of habit would endanger the validity of the policy; and said Cook received the assurance of said agent that it would *not* vitiate the policy, and that it was valid; and said Cook was induced by the said statements of the agent to continue paying the premiums on said policy under said assurance, and did pay them to the said Morris up to the

31st of August, 1880, the said Harvison dying upon the 25th of August, 1880.

9. A few days before said Goodale and Morris succeeded in procuring from Dr. Cook the assignment of the 14th of June, 1880, (R., 21,) said Morris and Goodale went to the office of Dr. Blackburn, the physician then attending Harvison in his last sickness, and asked Harvison's condition, and received the answer that "he could not live but a short time." He again asked how long the doctor thought he would live, and was told "not long; if they wanted to get it" [the policy] "cancelled they had better *hurry up;*" and said agents went from the said Blackburn to the hospital where the said Harvison was, and there received information regarding his condition similar to that received from Dr. Blackburn; and thereupon and thereafter persisted in "hurrying up" the business of getting the assignment of the policy; this by threats of immediate legal proceedings to vacate the policy, and by persistent dogging therefor; and all this in defiance of the repeated and vehement protests of the appellant, the amount paid Cook for said assignment being $1,300 less than the cash actually paid in by said Cook upon said policy.

10. In this case the company declined to take the risk first sent forward upon a single medical examination, and sent the application back for the purpose of an additional medical examination, and procured such second medical examination; and thereupon issued the policy upon and after two medical examinations. (R., 105, Ans. 9, *et seq.;* also R., 27, fol. 73, to R., 29, fol. 77, inclusive.)

11. The twenty-ninth paragraph of the application, in using the words "untrue or *fraudulent* answers to the queries," &c. These, taken in connection with the fact that the policy itself *is left blank* after the words in the policy "is issued shall be found," (fol. 65,) makes the answers

as to habits and other facts to be *not* in the nature of warranties, but simple statements assuming to give nothing more than the honest belief of the parties making the application.

Such are the essential facts of this case.

Law Points.

Our first proposition of law, submitted in view of the facts just recapitulated, is two-fold in its nature, and is as follows:

First. That the agency of the said Morris, in all the matters with which he was connected, as disclosed by the record relating to the procuring of the policy, and relating to this assignment back to the company, was not of that specific, special, and limited nature described in defendant's answer, (fols. 42, 43,) to wit, confined to soliciting applications for insurance, to receiving such applications for forwarding to defendant, to countersigning and delivering policies issued on such forwarded application, to collecting and sending to defendant premiums paid upon receipts therefor signed at defendant's home office, and to the appointment of sub-agents, with like powers, in Kentucky. But, on the contrary, the authority and power of the said Morris and of the said Goodale were—

Second. Full power and authority to represent and bind the defendant as its agent in the entire matter of considering and deciding upon the liability of the said defendant upon said policy; of considering and deciding, for the defendant, upon questions of the performance of the conditions of the said policy; of deciding on questions as to the forfeiture or non-forfeiture of such policy; of deciding on questions relating to the continuing validity of said policy, as depending upon the habits of the said insured, and of

deciding upon all other questions relating to the defendant's liability raised by the present record.

We cannot better enforce the foregoing propositions of law than by here presenting a careful statement of the opinion and judgment of this court in what has now become the leading case, of Insurance Company *v.* Wilkinson, 13 Wall., 222, from the opinion of Justice Miller, in which case, we take the liberty, owing to the bearing it has upon many features of this case, of making extended extracts.

In this case of Wilkinson, the risk was upon the life of Mrs. Wilkinson for the benefit of her husband. Like as in the case at bar, so as in this case, the insurance company was located in an eastern State (Maine), whilst the insurance was effected in a distant western State (Iowa). Like as in the present case, the insurance was effected through the agency of the local agent (Ball) in the western State. Like as in the case at bar, the application was made upon blanks furnished by the company. Like as in the present case, the answers were written down by the agent and afterwards signed by the applicant. As in the case at bar, so in this case, the application was forwarded to the company, the application approved and returned to the agent, who delivered it to the insured, and the agent collected the premiums. One of the questions in the application for the policy in that case was:

"Has the party ever had any serious illness, local disease, or personal injury; if so, of what nature, and at what age?"

The answer to this question was "No."

Two other questions and answers in the application were:

"Mother's age at her death? Ans. Forty."
"Cause of her death? Ans. Fever."

The defense was that the answer to the first question was false in this—that Mrs. Wilkinson had, in 1862, received a

serious personal injury; and that, in regard to the other questions, the mother had *not* died at the age of forty, but at the earlier age of twenty-three, and had died *not* of fever, but of consumption.

In that case the jury had returned answers to interrogatories submitted, under the Iowa practice, by the judge. These questions and answers to and by the jury were as follows:

"Did Melinda Wilkinson, in the year 1862, receive a serious personal injury by falling from a tree?" "Yes."
"Injured?" "Not seriously."
"Were the effects of such fall temporary, and had these effects wholly passed away without causing or affecting her subsequent health or strength of life prior to the time when the application for insurance in this case was taken?" "Yes."

Exceptions were taken to certain charges of the court. The substance of the charge relating to the "serious injury" was that, if it was not so serious as to shorten life, or permanently affect health, then non-disclosure of the injury would not defeat the policy; otherwise, it would.

In regard to the answer relating to the age at which the mother died, and the disease of which she died, the substance of the charge was that, if the applicant did not know the age at which the mother died, and declined to state it, and the age was inserted by the agent, on statements made to him by others in answer to questions by the agent, and on the strength of his own judgment, based on data thus obtained, it was no defense to the action to show that the agent was mistaken, and the mother died at twenty-three. Such was the general character of this case.

The court, in reaching the conclusion that the untruthful answers in that case did not vitiate the policy, and in affirming the judgment against the company, is brought to the consideration of the question, whether, under the present state of the law of insurance, local agents, acting at a

distance from the home of their company, ought to be regarded *as the agents of the insured, or, on the other hand, of the company, where they undertake to fill up the answers in the application.*

Speaking of the case where these distant local agents fill up the application themselves, the court asks the question, "Whose agent was Ball in filling up the application?" And then the court proceeds to answer this important question in the light of the fully-cited authorities.

The court say (page 234):

"This question has been decided differently by courts of the highest respectability in cases precisely analogous to the present. It is not to be denied that the application, logically considered, is the work of the assured; and if left to himself, or to such assistance as he might select, the person so selected would be his agent, and he alone would be responsible. On the other hand, it is well known—so well that no court would be justified in shutting its eyes to it—that insurance companies organized under the laws of one State, and having in that State their principal business office, send these agents all over the land, with directions to solicit and procure applications for policies, furnishing them with printed arguments in favor of the value and necessity of life insurance, and of the special advantages of the corporation which the agent represents. They pay these agents large commissions on the premiums thus obtained, and the policies are delivered at their hands to the assured. The agents are stimulated by letters and instructions to activity in procuring contracts, and the party who is in this manner induced to take out a policy rarely sees or knows anything about the company or its officers by whom it is issued, but looks to and relies upon the agent who has persuaded him to effect insurance as the full and complete representative of the company, in all that is said or done in making the contract. Has he not a right to so regard him? It is quite true that the reports of judicial decisions are filled with the efforts of these companies, by their counsel, to establish the doctrine that they can do all this, and yet limit their responsibility for the acts of these agents to the simple receipt of the

premium and delivery of the policy, the argument being that, as to all other acts of the agent, he is the agent of the assured. This proposition is not without support in some of the earlier decisions on the subject; and, at a time when insurance companies waited for parties to come to them to seek assurance, or to forward applications on their own motion, the doctrine had a reasonable foundation to rest upon. But to apply such a doctrine, in its full force, to the system of selling policies through agents, which we have described, would be a snare and a delusion, leading, as it has done in numerous instances, to the grossest frauds, of which the insurance corporations receive the benefits, and the parties supposing themselves insured are the victims. The tendency of the modern decisions in this country is steadily in the opposite direction. The powers of the agent are, *prima facie*, coextensive with the business intrusted to his care, and will not be narrowed by limitations not communicated to the person with whom he deals." (Citing here 25 Conn., 51; 8 Wright, 259; 16 Wisconsin, 241; 17 Iowa, 276.)

"An insurance company, establishing a local agency, must be held responsible to the parties with whom they transact business for the acts and declarations of the agent, within the scope of his employment, as if they proceeded from the principal." (31 Conn., 517; 40 Missouri, 557; 17 Iowa, 176; 11 Harris, 50.)

"In the fifth edition of American Leading Cases, after a full consideration of the authorities, it is said:

"'By the interested or officious zeal of the agents employed by the insurance companies in the wish to outbid each other and procure customers, they not unfrequently mislead the insured, by a false or erroneous statement, of what the application should contain, or, taking the preparation of it into their own hands, procure his signature by an assurance that it is properly drawn, and will meet the requirements of the policy. The better opinion seems to be that, when this course is pursued, the description of the risk should, though nominally proceeding from the insured, be regarded as the act of the insurers.'

"The modern decisions fully sustain this proposition, and they seem to us founded in reason and justice, and meet our *entire* approval."

The case of Wilkinson was affirmed in Insurance Company *v.* Mahone, (21 Wall., 152.)

There the defense was that, in the application for the life policy, the insured had been asked the question:

"Is the party temperate and regular in his habits?"

And the answer was "Yes."

Question 16 asked:

"Is the applicant aware that any untrue or fraudulent answers to the above questions, or any suppression of facts in regard to the health, habits, or circumstances, will vitiate the policy?"

The answer was "Yes."

There the policy was a life policy on a third person, Dillard, and was issued the 30th of August, 1870, for $5,000. It was issued to Mahone, but to be paid to Mrs. Mahone within sixty days after notice of death, with proviso that it should be void "if he shall become so far intemperate as to impair his health."

The defense was false representations in the application, and in answering the above questions, and that these representations were, by express agreement of the parties, declared to be warranties.

The first issue made by the record was whether Dillard has falsely and fraudulently answered "yes" to question No. 5. As to this defense, or issue, the court reaffirms the case of Wilkinson (*supra*), approves the admission of evidence showing that Dillard, whose life was insured, had not written the answers, but that the agent of the company had written them, though Dillard signed them *after they were read over to him.* The court says, speaking of these answers:

"Prepared, as it was, by the company's agents, and the answer No. 5 having been made, as the witness proved, by the agent, the proposals, both questions and answers,

must be regarded as the act of the company which they cannot be permitted to set up as a warranty by the answer."

This position of the court is broad and general, amounting to a declaration that, *wherever* a company's agent undertakes, himself, to write the answers for the insured, the answer becomes the act of the company through its agent.

The court proceeds to add that—

"This is *especially* so when, as in this case, two answers were in fact made by the applicant (if the witness is to be believed), and the agent substitutes for them others now alleged to be untrue, thus misrepresenting the applicant, as well as deceiving his own principal. *Nor do we think it makes any difference that the answers, as written by the agent, were subsequently read to Dillard and signed by him.*"

The case of Eames *v.* Home Insurance Company (94 U. S., 621) is one again approving the case of Wilkinson. The defense was false answers in the application. There the court held that, since the application *was the work of the company's agent*, the company was precluded from setting up the falsity of the description in the application. On this point the court, after approving the case of Wilkinson, says, page 630:

"The insurances were being applied for through this very agent, who wrote the answers and knew the whole facts, and between whom and the general agent they had been referred to in their correspondence. The defense, on this ground, is utterly destitute of equitable consideration."

In Insurance Company *v.* Baker (94 U. S., 610, 614) the cases of Mahone and of Wilkinson, *supra*, are again approved.

It is proper to remark, in passing, (though the point is a different one from that on which we are now engaged,) that this case affirms a principle which is material to be kept in mind in the case at bar, *that the burthen of proving the falsity of answer* 10, *in the case at bar, is upon the appellee.* So as to

every other fact set up as a defense. (See this expressly stated at page 612, 94 U. S. R.)

In this case of Baker one of the defenses was falsity of answers to certain questions relating to the condition of the assured and certain diseases named in the questions and in the answers thereto. Dr. Wells, the agent of the company in this case, wrote the answers in Mrs. Baker's application, but she signed them. (P. 613.)

Question 12 was one asking whether the parents, brothers, or sisters of the party insured, had been afflicted with pulmonary or other hereditary diseases, and the answer was "No."

There was testimony tending to show that this answer was false, and also testimony in regard to how this question was in fact answered, and whether Dr. Wells, the agent, was justified in writing the answer "No." The court held what is expressed in these words:

"The statement was one prepared by the company *for which it was responsible*, and it cannot be set up to defeat its policy." (Citing Mahone and Wilkinson, *supra.*)

We might increase the citations of authorities establishing the doctrine announced by this court in the case of Wilkinson, almost without limit. But this would be not only unnecessary, but, in this court, improper, because the doctrine of Wilkinson is the unchallenged and unanimous judgment of this court, repeatedly affirmed.

The result, therefore, of this ruling upon the case at bar may be thus stated. Here Morris, the agent, confesses that he filled up the answers for the insured in the absence of the insured. Here the weight of the testimony is that he filled the answers up in the absence of both the insured (Harvison) and the beneficiaries. Here the evidence is that he was "very anxious" to get the policy; the insured was his room-mate, either at or about the time of the application; that he knew about as much about the health and

character, habits, &c., of the assured as the beneficiary did; that he took the responsibility of filling up the answers. He also forwarded the application to the company with his approval. The company had a second medical examination of the assured. On the strength of this the policy was issued. No pretence was ever set up that any of the representations were false until the last sickness of the assured, when the company was admonished by Dr. Blackburn, shortly before the death, and during that last illness, that if they wanted to get clear of the policy they had better "hurry up"—nor until after the company had, in 1877, *refused* to cancel the policy owing to Harvison's alleged intemperance—nor until after the company had persisted in collecting the premiums up to the 31st of August, 1880, a time subsequent to the death of the assured.

Under such conditions we, in the light of the case of Wilkinson, submit and insist that the company is *estopped*, by the facts just recited, as facts and acts done by it through its agents, and it can rely upon no one of the alleged errors in the answers to the application for a defense in this case.

This proposition disposes, as we think, of any defense which is based upon the answer to question 10, relating to the habits of Harvison, and any defense that may be based upon that part of the application "Exhibit q q q," which is in answer 29 (R., 27) which proposes to make the policy void "should the applicant become as to habit so far different from the condition now represented to be as to make the risk more than ordinarily hazardous."

But there is another, and, we think, conclusive overthrow of any defense based upon this clause relating to change of Harvison's habits:—That defeat of this reliance of the defendant is in the fact that the company, through its agent, continued to receive the premiums from 1877 up to a time subsequent to the death of Harvison, and that this receipt of premiums was done with full knowledge on the part of the agent, Morris, of whatever change occurred

in the drinking habits of the assured. That said agent had such knowledge, we have already shown.

The law in regard to the power of the agent of a company, such as Morris was, to waive any conditions or misrepresentations contained in the application, is, by the modern decisions, most thoroughly settled. In May on Insurance, second edition, section 143, (p. 161,) the author states the rule on this subject in these words:

"It has, in fact, been very generally held that knowledge by, or notice to, the agent of the inaccuracy of a statement in the application upon which the policy is issued, after such notice or knowledge, binds the company, and prevents them from availing themselves of the inaccuracy in defense, some of the cases regarding the facts amounting to a waiver, and others as working an estoppel *in pais*. And this is true, even though the policy provide that when the application is made through an agent of the company, the applicant shall be responsible for such agent's representations."

To this, in note 3, the author cites a series of authorities, covering, in small type, an entire page.

The author proceeds:

"And, indeed, the tendency of the courts generally is daily becoming more decided to hold that such an agent may waive any of the conditions of the policy and bind the company by such waiver, and that his promises and acts, *both of omission and commission, representations, statements, and assurances*, made within the scope of his agency, and after knowledge of a breach of condition, or of the untruthfulness, inaccuracy, or incompleteness of the statements in the application, if relied upon by the insured to his prejudice, may be set up by him, being himself without fault, either on the ground of waiver or of estoppel, in answer to a claim of forfeiture."

To this, in note 1, is cited a multitude of modern and high authorities.

The author then proceeds:

"If the agent be guilty of fraud upon the insurers, and the insured knowingly aids in its perpetration, or, by neglecting to read the application, suffers it to be perpetrated, he is not without fault.

"The local agent of an insurance company authorized to issue and renew policies, and receive premiums, may consent to a change of title."

The author then proceeds, in section 114, as follows:

"And to these numerous and respectable authorities, the Supreme Court of the United States has recently added the weight of its deliberate approval."

The author then cites the case of Wilkinson, and proceeds to quote what we have above quoted from the opinion of this court in that case.

These frauds of insurance companies, in receiving the premiums up to the time when they find the assured about to die, or when they find him dead, and which are committed by *them*, repudiating the acts of their agents in procuring the insurance and securing the premiums up to death, have become so universal and so monstrous in magnitude, as that the courts and the legislatures of the States have been driven, from day to day, to protect the public against them. These frauds are so great in their amount that it has become a matter of common knowledge, that about ninety-five per cent. of all moneys collected on life insurance, in America, is permanently retained by the companies. These frauds have become so unbearable that this court has been driven, again and again, to say of them what is said, with such irresistible force, by Justice Miller in the case of Wilkinson, cited *supra*.

This court again, in the opinion of Justice Bradley, in Insurance Company *v.* Davidson, (96 U. S., 578, 579, 580,) describes the methods of these companies, through local agents, in committing these frauds upon their clients. It is

because of these frauds of these companies, so universally practised, that this court is constrained to use the language which we now quote from Phœnix Ins. Co. *v.* Doster, 106 U. S., 35, where the court says:

"And in Insurance Company *v.* Eggleson, (96 U. S., 572,) it was said that the courts are always prompt to *seize* hold of *any* circumstances that indicate an election to waive a forfeiture, or an agreement to do so, on which the party has relied or acted."

As tending to show how flagrant and unpardonable the fraud attempted in this case is, we beg now to refer the court to what is decided in the case of Insurance Company *v.* Eggleson.

The citation specially bears upon the "*plan*" suggested at the bottom of page 140 of the record, by this agent, Dr. Goodale, to his company, as a "plan" for defrauding the appellant out of this policy. In this case of Eggleson the court held what the syllabus expresses, in these words, (96 U. S., 573,) regarding a "plan" which omitted to give the customary notice when and where to pay the annual premium:

"Where A," (the insured) "in view of the company's dealings with him, had *reasonable cause to expect, and rely on receiving, notice where and to whom to pay the premium, and that the company* was estopped from setting up that the policy was forfeited by the non-payment, on November 11, of the premium then due."

Under this decision, therefore, the beneficiaries were entitled to the *usual* notice to pay the recurring annual premium. The company, through its agent, had received information in November, 1879, when Goodale conceived the plan stated in his letter of that date (R., 140), of the approaching death of Harvison.

Thereupon this agent, who boasts at the end of his letter

of November 25, (R., 141,) of the "good day's work" that he had done in preparing the way for getting rid of his policy, and he suggests a "plan" for consummating this fraud. He expresses that "plan" in the words already quoted, to wit:

"My PLAN, however, would be *not to say a word* to Dr. Cook about this drinking, or about the policy, but keep quiet, and *allow it to lapse and then it will be ended*, and our *excuse* for not notifying him of payment will be that the policy was considered forfeited by reason of misrepresentations of habits in appellant, and the subsequent habits of the insured, the knowledge of which comes to the company during 1879."

In view of the Eggleson decision, as well as the obvious principles of common honesty, this "plan" of the agent is downright villainy.

In this connection we desire to beg the especial attention of the court to the answer of this agent, Dr. Goodale, No. 12 (R., 79.) We allude to these qualities of Dr. Goodale's case, not for the purpose of reflecting upon his character. We do so for no other than the two purposes now most germane in this discussion—one for showing by the new example, which the Doctor's "plan" discloses to the courts, the *necessity* which has driven the courts to "seize" upon "anything" going to show a *waiver*, on the part of the companies, of alleged defects in the policy, after insurers have had the benefit of the policy up to the death, and are then attempting to escape from payment. The other reason is to show that Doctor Goodale has put himself in a position where he has deprived himself of all title to be credited when he undertakes to swear down the testimony of Judge Edwards, Mrs. Hickman, Miss Roberts, and Dr. Cook, regarding his being informed of Mrs. Cook's ownership of the policy.

In this answer, No. 12, (R., 79,) he says, speaking of his

interview with Dr. Blackburn, shortly before the death of Harvison:

"I asked the Doctor (Blackburn) if he was attending Harvison. He said he was. I asked him what was the matter with him. He said he had *some gastric trouble or difficulty with his stomach, and with his liver and his heart. I did not learn from Dr. Blackburn that he was in any danger of dying, but from what he said I was led to believe he would recover from the present sickness.*"

Now turn to page 66 and read the testimony of Dr. Blackburn regarding this same interview. He says, in answer to question 10, speaking of a question put by Dr. Goodale and Mr. Morris, they "asked the condition of Mr. Harvison, and what I thought of his chances of living," &c., and "*I told him he could not live but a short time*, and that was all that was said."

Then, question 12, same page:

"State what, if anything, Dr. Goodale said about a policy on the life of Wm. G. Harvison.

"A. Well, in the conversation they gave me to understand that Dr. Cook had a policy on his life, and there was some trouble about it, and they *wanted to get it before Harvison's death*. They asked me then *how long he would probably live, and I told them not long; if they wanted to get it they had better hurry up*, and they went out and said they were going up to see Mr. Harvison at the infirmary."

In view of what we have now stated regarding Dr. Goodale's position and evidence in the case, we are stating the matter mildly when we say that he is unworthy of credit, and that the case at bar shows the wisdom of the policy adopted by this court regarding such frauds, which it expresses in the sentence quoted, saying:

"That the courts are always *prompt to seize hold of any circumstances that indicate an election to waive a forfeiture, or an agreement to do so, on which the party has relied and acted.*" (106 U. S., 35.)

Apply, now, this language of the court about "waiver" and about the insured "relying" on acts of waiver to the present case. Dr. Cook received from the insurance agent, Mr. Morris, the assurance that the policy was valid, notwithstanding the then drinking habits of Harvison; that what was disclosed in the divorce suit would not hurt the policy; that it would be paid; that it was a good investment; and on that Dr. Cook relied, and paid the premiums until after the death, and abandoned the idea of making, on behalf of his wife and himself, the surrender of the policy.

The case at bar, therefore, is precisely within the language of this court last cited.

The points now gone over thoroughly cover every defense set up, in the present case, by the appellee, except one to which we will now proceed.

THE SALE, TO THE COMPANY, OF JUNE 14TH, 1880.

The appellee relies upon an extinguishment of its liability arising out of the assignment of June 14th, 1880, (R., 21.) We have carefully and fully considered the facts which show that this assignment was fraudulently procured as against the appellant, and the only *legal* point which this particular defense raises is, whether the assignment, by her husband, to the company extinguishes her rights, notwithstanding her protest made to the agents of the company.

We have already cited the authorities which establish that notice of Mrs. Cook's rights in this policy, given to these agents of the company before this assignment, is, in law, notice to the company. (See, further, 11 Wall., 366, 367; 96 U. S., 86; 101 U. S., 326.) If there were, under said authorities cited, any question left about this (as there is not) as to notice to the *local* agent, Morris, being sufficient notice of the company not to proceed with making this purchase in contravention of the rights of the appellant, yet there *can be no possible pretense, under any view of the*

law, that notice to Goodale not to make the purchase, and that it would be in fraud of the appellant's rights, is notice to the company. This is so because it is confessed upon the record that this business of getting up this policy was expressly and specifically entrusted to Goodale. This is not disputed. Morris was also entrusted therewith, and did a large part of the "hurrying up."

Hence, since Goodale was entrusted with this *very* business of getting the assignment, to the company, of the policy, there can be no possible question that notice to *him* of the rights of the appellant in the policy is notice to the company, *however* that might be in regard to a notice given to Morris, whose agency in this regard is poorly attempted to be disputed.

The only question of law, therefore, presented by this defense upon this assignment of the 14th of June, is whether Dr. Cook, even if acting with entire willingness and of his own choice, and not under the pressure of the dragooning and threats to which he was subjected, could, in law, as against the rights of his wife under the assignment, make a valid release to the company of her equitable title in the policy?

That this policy is assignable is not, as we understand it, questioned.

The face of the policy makes the money promised thereby payable "to A. B. Cook, creditor, and his executors, administrators, OR ASSIGNS." (R., 24.)

Again, the principles which tend to restrain the assignability of fire insurances have no application to life insurances, for obvious reasons.

On this point, May on Insurance, sec. 388, says:

"The reasons which led to caution as to the assignment of policies in fire insurance do not exist to the same extent in life insurance. There may, indeed, be cases where they would apply, but they occur so seldom that generally, almost universally, the claims arising out of life policies are recog-

nized as assignable, either absolutely or by way of security, without the assent of the insurers. Even notice is not always required; and, when required, is only necessary to protect the company from the possibility of being obliged to pay both the assignee and the legal representatives. Indeed, in the case of a policy for life the payment cannot be made to the insured; and in fire, also, the policy runs to the legal representatives and assigns. Much of the usefulness of life insurance depends upon the mobility of policies, and the companies have, for obvious reasons, been desirous to promote that end—a desire which the courts have been willing to encourage, so far as consistent with legal principles." (New York Life Ins. Co. *v.* Flack, 3 Md., 341; Anthracite Coal Co. *v.* Sears, 109 Mass., 383; Page *v.* Burnstein, 102 U. S., 664.)

There is, therefore, no possible question made or to be made in regard to the assignability of this policy. The face of the policy *estops* the company from denying this assignable quality, because the promise is express on the face of the policy to pay to the "assigns;" and if any question be left in regard to the legal possibility of Dr. Cook and the company, by their joint action, cutting off the equitable title of the assignee, through this assignment and against her known rights and protest, we cannot conceive what the foundation of such a question can be. That the assignor of a chose in action cannot, either by his own act, or by combination and collusion with the debtor, whose liability is the subject of assignment, impair, control, or extinguish the rights of the assignee in the assigned chose, is a matter of common knowledge and too familiar to be discussed.

This court has used upon this point the following words, in the opinion of Justice Story, in the case of Mandeville *v.* Welsh, (5 Wheat., 283):

"It has been long since *settled* that, where a chose in action is assigned by the owner, *he shall not be permitted fraudulently to interfere and defeat the rights of the assignee in*

the prosecution of any suit to enforce these rights, and it has not been deemed to make any difference whether the assignment be good at law or in equity."

We have seen, from the citation just made from May, that the courts *encourage* assignment of these life policies, and that "much of the usefulness of life insurance depends upon the mobility of the policies, and the courts have, for obvious reasons, been desirous to promote that end."

It is because of this last-stated fact that the courts solicitiously, and with the extremest rigor, protect the rights of the assignee of the policy after they have once "attached;" and never suffer the assignor nor the company, nor the two combined, by any contrivance, to cut off the rights of the assignee.

Strong illustrations of this are furnished by the reported cases upon insurance. One such case will be found in Brockhaus *v.* Kenna, Wis., 12 Reporter, 168.

Another case strongly illustrative of the rule of law which prohibits an assignor of a chose, or the party owing the debt, from either extinguishing, or in any way intermeddling with, the rights of the assignee, is found in the case of Merrill *v.* New England Ins. Co., 103 Mass., 245, 250. There the assignment of the life policy was made by the party whose life was insured, to wit, Howard M. Merrill. He made an assignment to his uncle, Thomas T. Merrill, of his policy, to secure a $700 note owing to the uncle. So that, in that case, the assignment was not a *full* and absolute assignment of the entire ownership of policy, but was one in the nature of a collateral.

Howard M. Merrill died a resident of Illinois, and his administrator in that State brought suit on the policy. The uncle resided in Massachusetts, and there held this policy in virtue of the assignment. This suit, brought by the administrator of Howard M. in Illinois, was, in point of time, the first one on the policy, but another was after-

wards brought, by the *ancillary* administrator, appointed in Massachusetts, upon the estate of the same Howard M. Thus the question was raised as to whether the suit in Illinois could go forward as against the action in Massachusetts upon the same policy, and the court held that the suit in Massachusetts controlled the asset and could not be interfered with or disturbed by the pending suit in Illinois.

The court says, page 250:

"The right of the plaintiff in this suit is *superior* to that of the principal administrator in Illinois, because he represents the *equitable interest and right of immediate possession and control* of the pledgee, as well as the legal capacity to sue which remains in the legal representative of the estate of Howard M. Merrill. * * * The assignee is *entitled to control any suit* brought for its recovery. His right *would be protected by the courts against any attempt by the administrator to collect or release the demand in disregard of his interest.* (Jones *v.* Witter, 13 Mass., 304; Sheridan *v.* Wright, 6 Pickering, 316; Grover *v.* Grover, 24 Pickering, 261; Rockwood *v.* Brown, 1 Gray, 261; Bates *v.* Kempton, 7 Gray, 382.)

"Upon the same principle it would be equally *protected* against prejudice from any attempt to incapacitate him by means of a suit instituted by such administrator in his own behalf, and without recognition of the rights of the assignee."

We might indefinitely multiply the authorities showing the same thing with those now cited, but this would be obviously unnecessary.

It is important now to add, as a corollary to the propositions just stated, showing the protection to which an assignee of a life policy is entitled, the following proposition, to which we beg the especial attention of the court, as it may, in a certain view of the evidence, become exceedingly important in this case.

The proposition is this:

We have already seen from the citation last made from May on Insurance that "even notice is not always re-

quired " (to the Insurance Company); "and, when required, is *only necessary to protect the company from the possibility of being obliged to pay both the assignee and the legal representatives.*" (May on Insurance, 580.)

This being the law touching the requirement of notice, it was unnecessary for Mrs. Cook to give to this company, at the time its agents were attempting to defraud her out of the policy, notice of her interest, *except* as such requirement might arise, as against her, to prevent an estoppel, *in pais*, arising out of her silence, or except as she is required to exercise proper good faith to prevent the company from being subjected to double payment. The company had, on the face of the policy, made it payable to "assigns." It had thus invited persons to become purchasers. It had undertaken to exercise all possible diligence, of its own motion, to protect its said promisee, to wit, the "assigns" of Dr. Cook. This being unquestionably the law of this policy it ends all discussion in regard to the question whether the company, through its agent, prior to this said purchase of June 14, had such notice of the rights of the assignee as to extinguish the possibility of its taking up the policy, as it attempted to do on the 14th of June.

It was, as just shown, entitled to no notice at all, except such as good faith demanded in order to protect it against double payment. Whenever, therefore, any fact is brought to the notice of the agents, Goodale and Morris, or either of them, when negotiating for the surrender of this policy, which would put them, as diligent and honest men, *upon inquiry*, that became, and was, and is, full, ample and complete notice, satisfying the law touching notice, in this case, of the assignee's interest. It will not, therefore, be necessary for the court to even decide the question as to who it is that testifies to the truth regarding the point of express notice to the company's agents of the existence of the as-

signment to Mrs. Cook—whether it is Dr. Cook, Miss Roberts, Mrs. Hickman, and Judge Edwards, on one side, or is Goodale on the other. This is so because if the court will take the testimony and the contradictions of both Morris and Goodale, or either of them, the court will see that these witnesses admit such knowledge of the claim of Mrs. Cook as is sufficient to have "put them on inquiry." The law relating to this point of constructive notice is also, like most of the others we have gone over, very familiar and thoroughly settled.

The language of this court, through Justice Miller, in the case of Harold *v.* Beall, (17 Wall., 591,) is precisely applicable in the present case. Speaking of the rights of a pretended *bona-fide* purchaser, the court says:

"It must suffice to say that we are convinced that the sale to Eckles was a barefaced fraud, and that if the appellee did not know it, when he purchased of Eckles, it was because he intentionally *shut his eyes* to the truth, and that he had SUCH NOTICE AND INFORMATION AS MADE IT HIS DUTY TO INQUIRE FURTHER, and that the slightest effort by him, in that direction, would have discovered the whole fraud."

There is, perhaps, no principle of equity jurisprudence which is more salutary in its just application, or which has been more steadily applied by the courts, than this one here recognized in Harold *v.* Beall. It is thus stated in the notes of Hare *v.* Wallace, (2 Leading Cases in Equity, 160,) in their summing up of the results of the authorities on the subject. They say:

"Whatever, therefore, is sufficient to direct the attention of a purchaser to the prior rights and equities of third persons, and to enable him to ascertain their nature by inquiry, will operate as a notice." They to this cite 7 Conn., 324; 2 Id., 180; 3 Id., 146; 2 Paige, 202; 1 Sum., 193; 4 Cow., 717; 2 Dev. & Bat. Ch., 360; 4 Scammon, 202; 16 Vt., 179; 17 Id., 320; 22 Id., 274; 26 Id., 676; 1 McLean, 110; 2 Dev. & Bat., 130; 4 Mo., 62; 7 Richardson Eq., 54; 3 Md. Ch. Decis., 488; Id., 537; 14 Ark., 69; and 1 Seld., 301.

The doctrine of the courts upon this point, that persons cannot claim the benefits of *bona-fide* purchaser where they have knowledge of facts which would put a diligent and honest man upon inquiry, is thus epitomised from the case of Jenkins *v.* Eldridge (3 Story, 181):

"No purchaser is at liberty to remain intentionally ignorant of facts relating to his purchase within his reach, and then claim protection as an ignorant purchaser."

In 4 Abbott's Nat. Dig., 484, the general doctrine is thus stated:

"A knowledge of facts which, if traced and understood, would *lead* to a knowledge of a title, is sufficient to charge a purchaser with notice of that title. (Tardy *v.* Morgan, 3 McLean, 358; Cuyler *v.* Ferrill, 1 Abbot, 169; Abner *v* Ward, 21 Fed. Rep., 820; Burbank *v.* Hammond, 3 Sumner, 429.)"

If, therefore, the appellee even was entitled to be notified of the rights of the assignee whom its policy covenanted to pay, then it has had that notice, according to the testimony of Dr. Goodale himself. The analysis we have made of his testimony shows that he was notified by Mrs. Cook that she had a claim which she was asserting, and it was his duty to inquire of Mrs. Cook and her husband what the nature of that claim was. This he pretends not to have done, though the truth is that he was repeatedly and fully not only notified of her rights, but was entreated to respect them, and warned not to trample them down.

It is now proper to direct the attention of the court to an additional suggestion relating to the answer to Q. 10 in the application. We have, as we think, already shown that the answer to that question was strictly *true*, and besides that, that it was the answer made by the company's agent, which it is *estopped* to deny. What we wish, however, to add, is a suggestion in regard to the meaning of Q. 10. The question reads:

"Is the party *addicted* to the *habitual* use of spirituous liquors or opium?"

This court has repeatedly held, what is thoroughly settled by the other authorities, namely, that the language of this application is construed most strictly against the insurer.

See this fully discussed, and the authorities cited, in May on Insurance, sections 170, 171, and in the cases cited in the notes to section 178.

Applying this rule to the language employed in Q. 10, what we submit is that the words "*addicted to the habitual use*," &c., mean and imply such *subjection* to the habit of drinking as makes the party insured the *victim* of the habit. This is the sense given by the dictionaries to the word "addicted."

Says Webster:

"Addict is commonly used *in a bad sense*, as addicted to vice."

Worcester says:

"Addicted is *only* used in an *ill* sense. Men *addict* themselves to vicious habits. Addicted; accustomed; devoted to; habituated; *abandoned* to."

In this the lexicographers precisely agree with the common acceptation of the word with the people. In the connection in which it is employed in Q. 10, no one would understand the words "addicted to the habitual use" to mean such use of spirits as the *defendant's own witness, Harvison*, says was his father's character in 1872, where he says, "*prior to the 31st of August, 1872, he used spirituous liquors very moderately.*" (Answer 4, R., 92.)

"Addicted" to drink everywhere means the *slave* of the habit of drinking. We mean "slave" to at least *some* extent.

In Insurance Company *v.* Foley, (105 U. S., 350), a question in the application was:

"Is the party of temperate habits? Has he always been so?" The answer was—"Yes."

The person making this answer was shown, at times, to have been intemperate and to have had *delirium tremens* at some time; and the question was whether the answer vitiated the policy.

The court held that it did not, and used the following language in that regard:

"The court did not, therefore, err in instructing the jury that if the habits of the insured, in the usual and ordinary and every day routine of his life, were temperate, the representations made are not untrue within the meaning of the policy, although he may have had an attack of *delirium tremens* from an exceptional overindulgence. It could not have been contemplated, from the language used in the policy, that it should become void for an occasional excess by the insured, but only when such excess had, by frequent repetitions, become a habit."

We close this brief with one additional suggestion:

Dr. Cook has received from the company four thousand dollars as a consideration for his conveyance of June 14. It will be insisted that it would be inequitable to allow the appellant to collect the entire policy, leaving her husband in possession of this $4,000.

Whether this court shall leave the company to its remedy for the recovery of this $4,000 from Dr. Cook, (who is perfectly solvent and responsible,) is a matter with which we need not here trouble the court. Should the court be of opinion that, to prevent circuity of action, or multiplication of suits, the company should *not* be so left for the recovery of the $4,000, to its action against Dr. Cook, then there is no difficulty in doing ample and complete justice to the company regarding the $4,000 by means of the decree in this case.

It is one of the boasts of courts of equity that they have "plastic hands,"—hands that are deft, and ingenuity that is fertile, in "moulding" and adapting their decrees to meet the justice demanded in every case before them.

Story's Eq. Juris., sec. 28, pp. 437, 439.

There is, therefore, not the slightest difficulty on this point. Should the court be of opinion that, in this action, the $4,000 should be accounted for, it will be done by crediting the appellee with the $4,000 as against the co-defendant A. B. Cook, and requiring him to account to the appellant for that money.

We beg the attention of the court to the compact and admirable brief on file, of the original attorney of record, Mr. Munday.

We submit that the decree in this case must be reversed, and one entered for the appellant for the amount claimed in her bill, with interest as claimed.

SHELLABARGER & WILSON,
Of Counsel for Appellant.

120-86

Supreme Court of the United States.

OCTOBER TERM, 1886.

No. 125.

FANNIE M. COOK, APPELLANT,

versus

THE PHŒNIX MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONN., APPELLEE.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF KENTUCKY.

BRIEF FOR APPELLEE

BY

AUGUSTUS E. WILLSON, of Counsel.

JUDD & DETWEILER, PRINTERS.

Supreme Court of the United States.

OCTOBER TERM, 1886.

No. 125.

FANNIE M. COOK, APPELLANT,

versus

THE PHŒNIX MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONN., APPELLEE.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF KENTUCKY.

BRIEF FOR APPELLEE.

THE CASE.

The bill was filed to recover upon defendant's policy of insurance, issued August 27, 1872, insuring the life of W. G. Harvison in the sum of $20,000 for the benefit of Dr. A. B. Cook, a creditor of Harvison.

The policy provides that "If any of the declarations or statements made *in the application for this policy, upon the faith of which this policy is issued*, shall be found in any respect untrue, * * * this policy shall be null and void." (R. 24.)

In the application referred to are the following questions and answers:

Q. 10. "Is the party addicted to the habitual use of spirituous liquors or opium?"

A. "No." (R., 26.)

Q. 29. "Is the party and the applicant aware that any untrue or fraudulent answers to the queries, or any suppression of facts in regard to the health, habits, or circumstances of the party to be assured will vitiate and forfeit all payments thereon?"

A. "Yes." (R., 27.)

The application is signed by Cook and Harvison and ends with the following declaration and agreement:

"It is hereby declared that the above are fair and true answers to the foregoing questions, and it is acknowledged and agreed by the undersigned that this application shall form the basis of this contract for insurance, which contract shall be completed only by delivery of the policy, and that any untrue or fraudulent answers, *any suppression of facts*, or *should the applicant become as to habits so far different from condition now represented to be in as to make the risk more than ordinarily hazardous*, or neglect to pay the premium on or before the day it becomes due, shall and *will render the policy null and void*, and forfeit all payments made thereon.

"Dated this 15th day of August, 1872.

(Signed) "WM. G. HARVISON,
"A. B. COOK."

(R., 27.)

Appellant sued on this policy in the Jefferson court of common pleas, from which, on defendant's petition, the action was transferred to the circuit court of the United States for Kentucky.

In that court the defendant demurred to the jurisdiction at law, because the alleged claim of complainant, under an assignment directly from her husband to her, was only an equity. The court sustained demurrer, and complainant obeyed the order to replead in equity. Defendant answered, replication was filed, and testimony on both sides produced, and upon the trial the bill was dismissed and complainant appeals. (R., 33.)

Complainant alleges that defendant made and delivered to her husband, A. B. Cook, the policy on Wm. G. Harvison, who was a debtor to said A. B. Cook; that the policy was in defendant's possession; defendant was requested to produce it; that Harvison died August 25, 1880, and after proof of death complainant duly demanded of defendant $17,340, the amount claimed by her (deducting $2,660 from the face of the policy on account of certain notes for parts of premiums).

That A. B. Cook took out the policy for her sole benefit; that the company knew this, and that after the policy was delivered to him, in order to carry out his purposes, with the knowledge of the company, he assigned the policy to complainant by a writing filed with her pleadings.

The defendant answered (R., 16–23)—

1. *Denying, among other things, that complainant is the assignee or owner of said policy,* that it was taken out for her benefit, that the assignment was made to her, or that A. B. Cook ever parted with his interest in the policy until he transferred it to the company. (R., 18–19.)

2. Alleging that said answer to question 10 in the application was fraudulent and untrue, that Harvison was addicted to the habitual use of spirituous liquors, and that said answer to question 10 suppressed the fact that said Harvison was so addicted, which fact was known to Harvison and Cook, and not known to defendant.

That Harvison was, at the time of the application, and for a long time had been, addicted to such habitual and intemperate use of spirituous liquors as to materially injure his health and greatly increase the risk.

That after said application said Harvison became and was, as to his said habit of the use of spirituous liquors, so far different from the condition then (in the application) represented to be in as to make the risk more than ordinarily hazardous, and the death of Harvison was caused or hast-

ened by it, that by reason of said false answers, suppressions of facts, and violation of conditions of the contract the policy is void; and that defendant had no knowledge of these things till 1880, when, in Harvison's lifetime, it notified Cook that the policy was void, and that it would no longer receive premiums on it. (R., 19–21.)

3. That on June 14, 1880, in the lifetime of Harvison, he assigned and transferred the policy to defendant, by written assignment on the policy, and surrendered and delivered it to the defendant for $4,000 in money and the return of Cook's notes for $2,660, for premiums on the policy; that this settlement and compromise was made in defendant's presence, with her full knowledge, in good faith, without any notice or information of any claim of complainant to the policy or the money therein stipulated to be paid. (R., 21–23.)

4. That complainant suffered the defendant to surrender the notes and draft in payment for the policy in said settlement, without giving any information of said alleged assignment, and is by her conduct estopped to set up her claim. (R., 23.)

The usual beginning of the answer in equity and the denial (R., 18) that she is assignee or owner of the policy, or that a right of action has accrued to her on the policy, or that A. B. Cook ever parted with his estate or right in the policy until his transfer of it to defendant, also raise the question as to whether complainant had an insurable interest in Harvison's life; whether she could acquire or hold title to the policy or money secured by it.

The issues, therefore, in substance, are:

1. Denial of the assignment to complainant.

2. That complainant had no insurable interest in Harvison's life, and therefore could not be assignee of the policy.

3. False answer to question 10, as to habitual use of liquor and suppression of fact of such use, and such use of liquors as to injure him, rendering policy void.

4. That Harvison became, as to habits, so far different from the condition represented in the application as to make the risk more than ordinarily hazardous.

5. The purchase of the policy by defendant from Dr. Cook, the beneficiary named in the policy, for $4,000 cash and $2,660 in his notes, without notice of Mrs. Cook's alleged claim.

6. Complainant estopped by her conduct.

7. Complainant claims that if Harvison's habits were bad defendant's agent, Morris, who took the application and collected the premiums, knew it and the company is estopped by this fact to defend on this ground.

8. That the complainant at the time of the surrender of the policy notified Dr. Goodale, the agent who got it, that it was his policy.

RELATIONS OF THE PARTIES.

The beneficiary named in the policy, also husband, chief witness, and manager of the cause of complainant, is Dr. A. B. Cook, a man of mature years, professor in a medical college, practicing physician and surgeon for twenty-nine years (R., 35, Ans. 17 and 18; R., 46, Ans. 84, 85), and medical examiner for life insurance companies for several years before he took out this policy (R., 42, Ans. 37); married complainant in February, 1872 (R., 45, Ans. 76). She had a daughter, Mamie Roberts, who is a witness for her in the case, with Mrs. Cook's sister, Mrs. Hickman.

Harvison, whose life was insured, was Dr. Cook's brother-in-law. Dr. Cook had known Harvison from boyhood; they were intimate friends (Cook, R., 42, 30, 31). This and his claim that he was a creditor of Harvison for more than $20,000 authorize the presumption that Dr. Cook had such association with Harvison as to know his habits.

Judge Edwards, who testifies for Mrs. Cook to prove that during the negotiations Mrs. Cook gave notice of *her claim*

to the policy, was *attorney for Dr. A. B. Cook, and aided in these negotiations* for the sale of the policy to the company.

Complainant's husband, Dr. Cook, who got $4,000 in money and $2,660 in notes from the company for the policy, her sister, her daughter, and the lawyer who acted for and advised her husband in the negotiations for the surrender of the policy, are complainant's witnesses, with several doctors, friends of Dr. Cook, who testify to the result of a secret autopsy on Harvison's body, held at Dr. Cook's request, to prepare for this case.

Of defendant's witnesses, Morris, former agent, was not agent any longer when he testified, had quit the company.

Dr. A. W. Goodale was an experienced special agent of the insurance company for fourteen years (R., 75, Ans. 1), and had no interest in this matter. (R., 147, Ans. 16.)

The confidential correspondence between the company and its agent Goodale, brought in by complainant, and the testimony of its officers, men of the highest character, managing a great trust, show that the first information the company ever had, that any one but A. B. Cook claimed any interest in the policy was Col. Mundy's letter of September 1st, 1880; that the first knowledge of Harvison's being addicted to the habitual use of liquors, at the date of the application, was Goodale's letter of November 25th, 1879.

That the company surrendered 2,660 in premium notes besides the $4,000 cash for the policy, in all $6,660.

That neither money nor notes have been returned.

That Morris was agent for the purpose of soliciting, procuring, and forwarding to the home office applications for insurance, to deliver policies issued by the company upon payment of the premiums, to receive and transmit cash and notes in payment of premiums where the official policy and renewal receipts were sent to him for collection, and to appoint sub-agents with like powers, and none others, unless expressly given in each case; that Morris had no authority to contract or negotiate for the surrender of any policy unless

authorized so to do specially (R., 138, Ans. 13). See also Morris' testimony to same effect (R., 945, A. 2, 3, 4, 5, and 6).

That after some negotiations, first with Goodale then with Morris, and later with Goodale on June, 13th, 1880, after the interview with Dr. Cook, Goodale telegraphed the company (R., 139) that Harvison was here sick, probably his last sickness; that the least Cook would take was $4,000, and if the company had anything to say to telegraph him on the 14th.

On the 14th the secretary telegraphed Goodale to settle on that suggestion, or better if possible. (Exh. "B," R., 139.)

On the same day, June 14th, 1880, Goodale gave Dr. Cook the draft on the company for $4,000, "Ex. R. R. R." (R., 29) to the order of Dr. A. B. Cook, endorsed and collected through bank by him.

On the same day Cook handed over the policy to Dr. Goodale in exchange for the $4,000 and the surrender of the premium notes, with this endorsement on the policy:

"I hereby sell, transfer, and assign to the Phœnix Mut. Life Ins. Co. of Hartford, Conn., all right and title to the within policy on the life of W. G. Harvison, in consideration of $4,000 in hand paid by draft on the said Co. and a return of the premium notes."

(Signed) "A. B. Cook."

(R., 25.)

Harvison died August 25th, 1880, and on Sept. 1, 1880, her counsel, Col. Mundy (R., 3) wrote setting up her demand, the first defendant ever heard of it.

POINTS.

I.

COMPLAINANT CANNOT RECOVER, BECAUSE SHE HAD NO INSURABLE INTEREST IN THE LIFE INSURED, AND THE POLICY ON THAT LIFE COULD NOT BE ASSIGNED TO HER.

Warnock vs. *Davis*, 104 U. S., 775.
Basye *vs.* Adams, 81 Ky., 368.

II.

If Dr. Cook had assigned this policy directly to his wife, as alleged, he could, unless such assignment was exhibited to the Company, sell the policy to the Company even against her wishes.

Kitchen *vs.* Bedford, 13 Wall., 413.
Cassell *vs.* Cowell, 11 Wheat., 134.
See, Moore *vs.* Page, III U. S. (read p. 119).

III.

The only testimony to prove the execution or delivery of the assignment of the policy by Dr. Cook, the beneficiary named in the policy, to complainant, is that of complainant's husband, and he is not a competent witness, to prove this for his wife.

Civil Code of Practice of Kentucky, § 606–1.
Rev. Stat. U. S., § 658.
Stein *vs.* Bowman, 13 Pet., 221.
Lucas *vs.* Brooks, 18 Wall., 452.

IV.

THE ASSIGNMENT TO COMPLAINANT IS NOT PROVED.

V.

THE DECREE FOR DEFENDANT IMPLIES THAT THE CIRCUIT COURT FOUND THE ISSUES OF FACT FOR DEFENDANT.

Found that the assignment to Mrs. Cook was not proved; that there was no notice to the company of any assignment to Mrs. Cook; that Harvison's answer to question 10 in the application was untrue; that his habitual use of spirituous liquors was suppressed in the application; that he became as to habits so far different from the condition represented in the application as to make the risk more than ordinarily hazardous; that the company bought the policy and settled it in good faith without notice of Mrs. Cook's claim. It nowhere appears that complainant asked the circuit court to state its findings or separate its conclusions of law and fact.

The decision of the court below upon the issues of fact is entitled to great weight. That court is likely to have more acquaintance with the credibility of the witnesses than the court which tries the appeal, and it seems unlikely that the findings of fact implied by the decree will be disturbed here unless obviously erroneous.

VI.

At the time of the application Harvison was addicted to the habitual use of spirituous liquors. The answer to question 10 in the application was false and the policy void.

VII.

The application suppressed the fact of the use of spirituous liquors, and this rendered the policy void.

VIII.

Harvison became, as to habits, so far different from the condition then (in the application) represented to be in as to make the risk more than ordinarily hazardous, which rendered the policy void.

IX.

The claim that defendant is estopped by Morris' alleged knowledge of Harvison's habits is not well founded.

X.

The defendant settled a controversy over the validity of the policy, in the lifetime of Harvison, by paying the beneficiary named in the policy, Dr. Cook, $4,000 cash and $2,660 in his notes for it, June 14, 1880, in good faith, without notice of complainant's alleged claim.

XI.

Complainant was present and saw her husband take the money and deliver up the policy, without making the claim now set up, and is estopped to set it up in this cause.

XII.

Some statements and arguments for complainant reviewed.

ARGUMENT FOR APPELLEE.

I.

NO INSURABLE INTEREST.

Dr. A. B. Cook took out the policy as a creditor of Harvison. Appellant, who claims that the policy had been assigned by the writing, "Exhibit A" (R., 4), is the wife of Dr. Cook. She neither averred nor proved, nor was it true, that she had any insurable interest in Harvison's life. She had no relations with Harvison, either as creditor, surety, or by ties of blood or marriage to him, which would justify any expectation of advantage or benefit from the continuance of his life, no pretense of a reasonable ground, founded

on any relation, either pecuniary or of blood or affinity, to expect any such benefit or advantage. As to her it was a wager policy. She was interested only in Harvison's death. He had only been husband of her husband's sister, and in 1877, several years before Harvison's death, even that weak cord was severed by her husband's sister obtaining a divorce from Harvison.

An assignee who sues must aver and prove facts which authorize recovery by him against the defendant. If suit is on an instrument, like a policy on a life, which is not assignable to every one who would take it, but to a very limited number of people. it is plain the assignee must aver and prove that she is of the class to which it is lawful to assign this contract. She must aver and prove that she has an insurable interest in the life insured.

Reuse *vs.* Mutual Benefit, &c., Co., 23 N. Y., 516.

Fowler *vs.* N. Y. Indemnity, &c., Co., 26 N. Y., 424.

Murdoch *vs.* Chenango Ins. Co., 2 Comstock, 210.

The introduction to defendant's answer, which saves the questions which a demurrer would raise at law, is a sufficient objection to the failure to aver this, and the denial that it was assigned to complainant, or that she is the owner of it, is not overcome by evidence of an assignment which is void, because contrary to public policy.

Nor does counsels' suggestion (Mundy, p. 8) that the legal title remained in Dr. Cook meet this objection. Unless the legal title is accompanied with beneficial interest Dr. Cook is not interested against his wife's interest in Harvison's death. The safeguard intended in Warnock *vs.* Davis, 104 U. S., 775, was intended and declared to be against real owners—not nominal owners or assignees—of life policies. Under that decision a policy taken in the name of one having an insurable interest for the real benefit of one not so interested, or assigned to one not having such interest, is void. The protection is against the danger, whether direct

or indirect. I note Basye *vs.* Adams, 81 Ky., 348, which shows that the State of Kentucky, where this policy was applied for and delivered, falls into line with *Warnock* vs. *Davis.*

The assignment (R.,4) does not pretend to settle the Harvison debt on her. "The money secured thereby, like the money secured by a note, means the money to be due on the policy. Dr. Cook does not pretend, *nor does complainant allege*, that Dr. Cook assigned the debt to her, but that "the *said* policy and *money* became her property." The money referred to is the $20,000 on the policy, not the debt. There is not a fact or statement in this record, nor could there be, in which she or any one for her could have demanded any portion of the $20,000 or $30,000 debt of H. to C. from August, 1872, until this day. C. does not even say he *intended* it for her, while he is very loquacious of his intention as to the policy. Dr. Cook always had unlimited control of that whole debt, every penny; could release, give away, sell or transfer it, sue on it, receive payment on it; and she never could sell, release, transfer, collect, or sue for one cent of it.

II.

Cook had the right to dispose of this policy even if it had been assigned to his wife as alleged. It was personal property. He retained the legal title. He appeared in the policy to be the holder of the legal title. This court has held that a husband may control property conveyed by him as an equitable gift for his wife's benefit.

Of course third parties are not affected with notice of secret equities of wife against husband.

Such equities may be good between husband and wife, but as against a third party they are void.

If a husband give his wife a horse, by words or writing between husband and wife, and subsequently the husband sell it, the title passes, no matter if the wife declare it is hers,

and has been given or assigned her. If such a declaration put the purchaser on notice, a wife could make it impossible for her husband to sell any personal property.

III.

THERE IS NO COMPETENT EVIDENCE THAT THE ASSIGNMENT ALLEGED BY COMPLAINANT WAS EVER MADE.

It is denied (R., 18). Its execution and delivery are testified to by Dr. Cook alone. There is no other testimony in the record to prove the execution or delivery before the time when the policy was transferred to the company. There is testimony of *Mrs. Cook's* declarations that the policy had been assigned to her, but this testimony is only competent to prove notice to the company of the assignment, and not to prove the making of the assignment itself; and if the assignment is not proved such notice is, of course, immaterial. Dr. Cook is not competent to testify for his wife in reference to this transaction. (Stein *v.* Bowman, 13 Pet., 221; Lucas *v.* Brooks, 18 Wal., 452.)

The code of practice of Kentucky as to competency of such witnesses is adopted as to Kentucky cases by Revised Statutes of the United States, section 858. The section of the code of Kentucky, which regulates this, is as follows (§ 606, — 1):

"*Neither a husband nor his wife shall testify,* even after the cessation of their marriage, *concerning any communication between them during marriage;* nor shall either of them testify against the other; *nor shall either of them testify for the other,* except in an action for lost baggage or its value against a common carrier, an inn-keeper, or a wrong-doer, and in such action either or both of them may testify; and *except in actions which might have been brought by or against the wife if she had been unmarried,* and in such actions either, but not both of them, may testify."

Neither Cook nor wife can testify to the alleged assignment to Mrs. Cook, because it is a written "communication," alleged to have been made by the husband to his wife during marriage, to assign this policy to her. No third person intervenes; no one else witnessed it. It is wholly between husband and wife. Such a story, agreed upon in the confidence of the married state, is not like a transaction between two independent parties, in which society has, at least the chance, of the protection of the testimony of one or the other of the two parties. Such testimony, if admitted, can only be met by circumstantial evidence.

This is not an action for "lost baggage," nor an action "which might have been brought by or against the wife if she had been unmarried." Of course it could not have been brought against her, and Mrs. Cook could not have brought it if unmarried. The only *claim* of complainant to any insurable interest in Harvison's life is through her marriage to Dr. Cook. If she had been unmarried, not even this claim of an interest would exist; and, therefore, if she had been unmarried, the only pretense which she makes to an insurable interest would be lacking, and plainly she could not bring the action. It seems to us, therefore, that there is no competent testimony to prove the assignment.

Col. Mundy's brief does not cite any part of the record to prove the assignment. The brief of his colleagues (pp. 10–18) cites extensively, but cites no witness except Dr. Cook to prove that he made or delivered the assignment to his wife, and Dr. Cook is not a competent witness for her on this subject.

IV.

THE ASSIGNMENT TO COMPLAINANT IS NOT PROVED, EVEN IF DR. COOK'S TESTIMONY SHALL BE ADMITTED.

When we consider the whole case, the character of the witness, Dr. Cook, as shown by his conduct, and all the circumstances together, it is plain that the assignment was

not made. Certainly the very strongest position which can be assumed for complainant on this issue is that Dr. Cook swears he did make and deliver the assignment, and Judge Edwards and Mamie Roberts and Mrs. Hickman testify to complainant's declarations that it had been assigned to her. And for defendant, that the testimony of Dr. Goodale and Mr. Morris positively denies the declarations; that Dr. Cook's conduct from 1872 till he settled his policy in 1880, and his wife's conduct, are both wholly inconsistent with this proposition, and Dr. Cook has borne himself in such manner as to destroy the weight of his testimony. I shall not reprint all of the evidence cited in brief of Messrs. Shellabarger & Wilson (pp. 10 to 18), but notice what seems material. On p. 10 they cite Dr. Cook's testimony to prove the assignment, (p. 11); that he told Dr. Goodale that the policy belonged to his wife, was her property, and he could not make any settlement (contradicted by Goodale, R., 83, Ans. 30; R., 81, Ans. 18 and 22; R., 81 and 82, Ans. 23; R., 82, Ans. 24).

On p. 11, is Dr. Cook's testimony as to what his wife said and did, all of which except the statement that she declared that Dr. Cook was in no condition to transact business, is directly contradicted by Dr. Goodale. (See last citations above and R., 81, Ans. 21; R., 83, Ans. 34, 35, 36, 37; R., 84, Ans. 38.)

Counsel's citation, on p. 11, from bottom of p. 26 of the record, is directly contradicted by Dr. Goodale. (R., 84, Ans. 42.)

They also cite pp. 11–12, Dr. Cook, R., 49, Ans. 3, to prove declarations of Dr. and Mrs. Cook that the policy belonged to her, and as to the assignment, all of which is directly opposed by Morris' testimony. (R., 96, Ans. 16, 18, 19, 20; R., 97, Ans. 21, 22.)

On pp. 12–13 they cite Judge Edwards to prove that Mrs. Cook opposed a settlement, claiming that she owned the policy; that it had been assigned to her; that she claimed that the assignment had been made to her through the agency of Morris. Judge Edwards added:

"*The assignment was not produced!*"

These statements, except the last, are directly opposed by Mr. Morris in a very sensible and reasonable answer. (R., 102, fol. 286–'7.)

Certainly Judge Edwards cannot mean that there was any real indication that Mrs. Cook owned the policy or that it was assigned to her. For a long time he acted as attorney for her husband while he was trying to get a large price for it, and neither Judge Edwards or any lawyer whom a court would believe, would be counsel in an effort to get several thousand dollars for Dr. Cook on a policy which the lawyer knew was not Dr. Cook's policy.

There is no doubt Mrs. Cook attempted to "boss the job," as Judge Edwards says (S. & W. brief, p. 14), and, as wives often do, opposed settlement; insisted at first that *her husband* should hold out for more money, and at last, when Harvison was failing, that *he* should hold on to the policy and sue for the whole amount, but it cannot be that she claimed to own the policy, or Mr. Edwards could not have acted as he did for Dr. Cook. It is very likely that she may have said that Dr. Cook had *promised* to give her the money on the policy, and made other claims as wives claim horses, carriage, furniture, pictures, &c., which are the property of the husband, but are *called* the wife's, and it is said that once she carried this so far that Morris "went one way" and *Dr. Cook's* lawyer, Judge Edwards, "the other." (S. & W. brief, 13.)

Judge Edwards admits that he might be mistaken as to her saying to Morris that the policy had been *assigned* to her. (S. & W. brief, p. 14; R., fol. 165.)

He admits (R., 61, Ans. 16) that she may have said also that Dr. Cook had said the money *should* be hers—had *promised* it to her. He admits that the only thing which fixes in his memory anything about an assignment is "the decided manner in which she attested her right to control the matter." (S. & W. brief, p. 14.)

On p. 15 of that brief they cite the only evidence of any one, except Dr. Cook, who can be claimed to have seen the

alleged assignment before the sale of the policy; the statement of Edwards, that he recollects her bringing him the assignment, and he *thinks* it was before the sale, but of this he is "*not positive.*" (He was not at the sale.)

Mamie Roberts' testimony (cited S. & W., 14–18) is merely a child rattling off the family theory of the case, and will be considered further along.

Mrs. Hickman, Mrs. Cook's sister, makes a statement, contradicted by Mr. Morris, that Mrs. Cook told Morris the policy *had* been assigned to her.

AGAINST ALL THIS WE HAVE

Dr. Cook's conduct from 1872 to the sale. It was the conduct of one who owned the policy. Mrs. Cook's conduct—statements that she knew Dr. Cook owned the policy, and her repeated requests, long after the alleged assignment, for Mr. Morris to get the Doctor to assign the policy to her.

The fact that Judge Edwards, who talked the whole matter over frequently with Mrs. Cook, and was attorney for Dr. Cook, acted for Dr. Cook as if it was Dr. Cook's policy.

The positive contradiction by Dr. Goodale and Mr. Morris, both men of mature years and honorable standing, of all the testimony to show notice to them.

As I have said, the only way we can oppose the testimony of Dr. Cook's for his wife to the making of this assignment is by circumstances inconsistent with the story which Cook tells.

DR. COOK TREATED THE POLICY AS HIS.

He put it with his papers in Garland's safe when they traveled. He sometimes kept it in his private secretary (R., 34, Ans. 9). In 1887 he left it with Morris to be canceled (Cook, R., 38, Ans. 27). He wrote the company to reduce the policy to a cash basis (R., 38, Ans. 36) in the fall of 1879, and through 1880 he was carrying on negotiations with Goodale and Morris for its sale, frequently in his wife's

presence. He talked to Morris of surrendering it in 1876 and in 1877 (R., 95, Ans. 9). He wrote the following letter October 15, 1879, only eight months before he sold it to the company (Exh. "E," R., 145):

"LOUISVILLE, KY., *Oct. 15th*, 1879.

"Mr. Aaron C. Goodman, Pres. Phœnix Mut'l Life Ins. Co., Hartford, Conn.

"DEAR SIR: *As holder of policy No.* 66488, *Wm. G. Harvison for* $20,000, *I desire to know if there is not some way in which I can reduce the policy*, &c., &c.

"Signed, A. B. COOK, *M. D.*"

He employed a lawyer and for a long period was consulting with him as to disposing of this policy. He went to the Galt House with a lawyer to negotiate about the surrender of the policy. When he sold it, he took it out of his private secretary and handed it to Dr. Goodale (R., 41). There are many other instances in which he treated it as his policy, not necessary to set forth here.

Nobody acted as if the policy was Mrs. Cook's. In all the negotiations it is not pretended that anybody, Judge Edwards, Dr. Cook, Mr. Morris, or Dr. Goodale, ever referred to her, asked her wishes, or acted as if she had any right in the matter. If she had been really claiming it as her property under an assignment it is impossible that no one should have known it then or shown it then.

MRS. COOK'S CONDUCT.

She was present at nearly all of the negotiations for the surrender, yet never showed the alleged assignment or said or did anything which prevented the surrender or interrupted the negotiations. She was present when he endorsed the draft (R., 40, A. 9). Morris says: "Mrs. Cook, upon more than one occasion, has expressed surprise that her name had not appeared in the policy," and upon oft-repeated occa-

sions she had asked him to get the Doctor to make an assignment of the policy to her. (R. 99, A. 35.)

"I do remember as a fact that * * * frequently Mrs. Cook desired me to get the Doctor to make an assignment of the policy to her. It was frequently in the office of Dr. Cook, but some time after the policy was issued." (R., 99, A. 36.)

Morris further says that the request to get the Doctor to make the assignment of the policy to her was certainly made more than two months after the issue of the policy, and several months after the issue of the policy; and adds, "She may also have made it less than two months after such issue." (R., 103, A. 57–'8. See, also, R., 110, X 61–'5.)

Morris says also that Mrs. Cook quite frequently asked him to use his influence and endeavor to get the Doctor to assign the policy to her, and manifested quite a good deal of anxiety that the assignment should be made, and for some time after the issue of the policy; that she was not in the habit of talking to him in Dr. Cook's presence about the assignment (R., 125, Rd. 11). Such conversations continued after September 19, 1872 (R., 125, Rd. 12). Counsel for the complainant cross-examined Morris thus:

"Q. Are you positively certain that the complainant solicited you to get Dr. Cook to assign the policy to her after September 19, 1872 (date of alleged assignment)?

"A. I am.

"Q. From what fact or circumstance do you fix the time in your mind?

"A. From the frequent and persistent solicitations on the part of Mrs. Cook, which ran through several months, but not from any special fact or circumstance.

"Q. Can you fix the time and place when she last solicited you upon that subject after September 19, 1872?

"A. I cannot fix the time. The place was the office of Dr. Cook." (R., 128, Recross, 8–10.)

He thinks she made this request more than twenty times (R., 128, Ans. 14).

In 1877, when Dr. Cook surrendered the policy to be sent on for a paid-up Mrs. Cook came to Morris' office and asked "What *the Doctor* had done about the policy," and being told that it was surrendered she asked the agent to wait *till she could see the Doctor about it.* (Top R., 96.)

Judge Edwards testifies (R., 58, Ans. 10) that Mrs. Cook claimed that the assignment had been made to her through the agency of Morris as her friend, and she complained of his trying to adjust the matter contrary to her wishes. He says the assignment was not produced.

If Mrs. Cook made this claim she made it under the impression that Morris might join in and help her. Morris was no longer agent of the company. He had said something to her about how to proceed to sue on the policy (R., 112, Ans. 81). She had said to Morris that *he had no longer any interest in the company, and he could be of assistance to her, for which he should be well paid* (R., 112, X. 78). Morris says (R., 97, Ans. 25) that she made a very emphatic statement that if he would assist in the prosecution of the claim he should be well paid for it.

Mrs. Cook, if Judge Edwards is not mistaken as to what she said to him, no doubt ventured to say this to Morris, because of the matters above stated, hoping that Morris would acquiesce. This is an entirely different story from that told by Dr. Cook of the assignment. Dr. Cook tells it as if he alone had made it, while this is a story of an assignment procured by Morris. Mamie Roberts (R., 70, A. 12) says that her mother told Morris it had been assigned to her by his dictation, and this does not agree with either Dr. Cook's story or Judge Edwards' statement. Morris states (A. 21) that when she talked to him about her claim he understood her to refer to a "*future interest*;" that upon the death of Harvison the doctor *was going* to give her the proceeds of the policy; that she never told him before the doctor's death that he had given her any interest in the proceeds of the policy. (R., 97, A. 20–22.)

In February, 1880, she said to Dr. Cook on the street in Morris' presence, that if the Doctor took less than $3,000 for the policy he need never call her his wife (R., 122, X. 166). She recognized his right to sell it, approved of his selling for $3,000, but protested against less.

It is not probable that the assignment would have been kept by Mrs. Cook and no record of it sent to the company if it was an actual transfer.

It is not pretended that in all of her interviews with Judge Edwards she expressed any surprise, criticism, or complaint of his acting as her husband's lawyer in negotiating for Dr. Cook's sale of the policy, although Edwards says she took deep interest in it and talked with him very often about the policy.

Judge Edwards says "she was determined to boss the job;' that her manner and bearing were not those of a woman in fear of her husband nor governed by his plans or will; he saw nothing to "indicate anything to influence her action other than her own will" (R., 60, X 13 and 14). Just as soon as the policy was sold and the $4,000 draft received for it Mrs. Cook went "to see her counsel, Colonel Munday, at once." (R., 69, A. 10.)

It seems to me not only not clear that the circuit court was wrong in deciding that the assignment was not made, but that the evidence for the assignment is weak and of dangerous character, and the evidence against it strong and persuasive.

DR. COOK IS DISCREDITED.

When all the circumstances are considered Dr. Cook's testimony cannot be believed nor have any weight. There is so much discreditable conduct, so much false pretense, such evident guilt of fraud and crafty scheming to make it successful that he is entitled to no credit and deserves the severest condemnation.

Although he has been a doctor and a surgeon for twenty-

nine years (R., 35, A. 17), examiner for life-insurance companies for several years before 1872 (R., 42, A. 37), professor in a medical college, who, "at the urgent solicitation of the faculty" had just finished a course of lectures and gone to a medical convention at New York just before the sale of this policy, he attempts to plead the baby act, and claims that the reason that he sold the policy to the company for four thousand dollars was that Morris and Goodale for months harassed and besieged him to give up the policy, claiming that it was void, and he would be sued for a surrender if he did not do it, and that under those threats he yielded the policy, though protesting against it, at a time, when, *his wife declared*, he was in no condition to transact business, and to have been frightened, by threats of a suit to cancel the policy, into surrendering it for $4,000 cash and $2,660 in notes. He leaves it to others to call attention to the fact that he, the sick professor himself, carefully got ready to be profitably frightened by getting the policy out of Garland's safe at the drug store two or three days before he transferred it to the company's agent (R., 41, Cook, X 24). It does not appear that any agent of the company was at the drug store or pushing Professor Cook to get the policy out of the safe, nor even that his wife aroused him to get it out by "protesting violently" against it, but it is plain that Dr. Cook could not have been frightened into taking $4,000 for the policy from the company, in his then frail condition, without getting the policy out of the safe so that it could be turned over to Dr. Goodale.

Although he pretends to have been so harassed and besieged, he does not show more than three or four visits to him for the surrender of the policy—one in December, 1879, which this besieged man returned by raising the siege and seeking the company's agent at the Galt House, and even employing a lawyer to go with him, on the same afternoon, changing the siege into a warm pursuit in force, and there making an offer himself to return the policy for the money

that he had paid for premiums (R., 45, Cross 71). He was visited in February, 1880, and on June 12 and 14 by Goodale. He had one or two interviews about this matter at his lawyer's, Judge Edwards', office, which he must have sought, and on three of these interviews had his lawyer with him. (R., 46, X 88–9.)

It is plain that the pretense of Dr. Cook's sickness at the time (June 14, 1880) is false. He suggests a picture of a moribund man at the mercy of two life-insurance agents, a thing calculated to move the pity of both gods and men; but this picture is hinted at, not proved. No one says that Dr. Cook was sick, sore, or disordered when he sold the policy and took the money. Even Dr. Cook did not say it. It is not alluded to in the record except as follows:

Dr. Cook states that before the application, August 15, 1872, eight years before the surrender, his health *had been* so precarious he would not offer himself for a policy (R., 33, A. 3). Then he uses the expression "When we traveled for the benefit of my health," &c. (R., 34, A. 9). "*She told* Dr. Goodale that I was in no condition to transact important business" (R., 36, A. 20) "in October, 1879, in consequence of failing health, &c." (R., 39, A. 36). "In June, 1880, I was practicing and attending to so much of my business as my health would permit" (R., 46, X 84). He went to New York, then, after finishing a course of lectures (R., 46, X 85). Miss Mamie Roberts says, "Mamma told Dr. Goodale papa was in no condition to transact important business" (R., 69, A. 7). And Dr. Goodale says Mrs. Cook did *say* this. (R., 84.)

This is every word of testimony as to the "impaired faculties" of Dr. Cook mentioned in counsels' brief (p. 2). Neither Dr. Cook nor any one testifies that Dr. Cook was not able to do business June 14, 1880, when he sold the policy. They rely on Mrs. Cook's declarations, which are not evidence of his being sick then. The only *evidence* of his condition, then, is that of Dr. Goodale: "I thought he

was able to attend to business" (R., 88, A. 8). "I said the doctor is visiting patients and attending to business, I believe." (R., 91, R.-d. 1.)

Dr. Cook has to claim too much. He must claim not only that he was overcome but also that we went further and inspired him to overrule his strong-minded wife and deliver the policy to Goodale in spite of the fact that she positively and firmly protested and said she "would never consent," would never change; her mind was firm as a rock; and she protested violently. He admits that she is a woman of strength of will and determination and business capacity (R., 45, A. 81). And Judge Edwards says (R., 60, Cross 10) than on one occasion, when they were discussing this thing, and she took a hand, he "went one way and Morris the other."

HIS PRETENDED REFUSAL TO JOIN IN THE SUIT.

A circumstance characteristic of the conduct of these parties is Mrs. Cook's allegation (R., 3) that her husband refused to join with her as plaintiff in the case, and his answer and testimony that this is true. It is easy to appreciate that even these Cooks—of whom it takes few to spoil the broth—would have some appreciation of the ugly look of Dr. Cook joining his wife in a suit on a policy for which the company had paid him $4,000 in cash and $2,660 in notes in his wife's presence, but it is straining at a gnat and swallowing a camel for him to make any such pretense after his carnival over Harvison's dead body.

THE POST MORTEM.

This secret autopsy was peculiarly revolting in its features. There is no pretense that it was for any scientific purpose, or because of any desire of Harvison or any one who cared for him to solve any anxiety as to the cause of death. It was made "simply at the request of Dr. Cook (R., 64, X 1; R., 41, Cook, X 25) without notice to defend-

ant, which he was preparing to defraud a second time on this policy, or any of its representatives (R., 41, X 27), and there is no pretense of any reason except the obvious one that he was getting ready to meet the defense, which he anticipated to this suit."

It was not an inquest. (R., 63, Ans. 1; R., 64, X 1.)

The doctors present came on the request of Dr. Cook (R., 51, X 2; R., 53, X 1; R., 64, X 1) without any special explanation as to what he desired to obtain by the autopsy. (R., 51, X 3, 4, 5; R., 53, X 2; R., 64, X 2.)

The body was cut open from the upper part of the breast (*sternum*) to the lower part of the abdomen, the ribs disconnected and thrown back (R., 51, X 6). The lungs were exposed and freely cut into; also the heart and pulmonary artery; the abdominal organs exposed; the liver and stomach cut into and examined (R., 54, X 2). The liver was *cut open and sliced;* the liver, stomach, and kidneys were taken out and laid on a board. (R., 66, A. 7.)

The point to which Cook directed the autopsy, to meet the defense on the ground that Harvison's habits had become such as to make the risk hazardous, shows that he was acting under professional advice as to what evidence would be necessary.

It does not seem probable that the omens which Dr. Cook's medical soothsayers claim to have discovered in the entrails of poor Harvison when he was offered up as a ghastly sacrifice to the scheme of Cook and wife to make a second haul out of this fraudulent policy can or ought to have any serious weight.

If the Cooks were acting in good faith, wished to show fairly that Harvison did not drink or was not injured by drinking, and that his drinking did not make the risk hazardous they should have obtained permission of the kinsmen of the deceased, told the doctors the object of the autopsy, and notified the company and had the inquiry open, fair, and above-board; but such was not the object,

and the testimony would be suspicious and of trifling weight even if unopposed.

Dr. Cook not only had this *post mortem* to prepare for this case, but he got the doctors and Judge Edwards to testify *for his wife* in this case, and refreshed their recollection (R., 54, X 4, 5, 6, 9; R., 58, X 1; R., 59, X 7; R., 64–'5, X 7, 8, 9, 10, 11, 12; R., 67, X 6, 9) and crowned his efforts by giving the principal deposition, which is a notably cool and methodical effort to promote this fraudulent scheme.

Harvison died August 25, and on September 1st Mrs. Cook notified the company of it, and that she claimed $20,000 on the policy.

There is no dispute that Harvison drank many years and frequently to excess. That testimony is undisputed. Nor is the testimony as to the effect of such habits on the risk, disputed, except by this secret, unauthorized, *Cooked*-up *post mortem?* A witness who, pretending to refuse to be a party to the suit and holding on to the $4,000, does such things as these is not morally a suitable man to give credence to.

V.

The decree of the circuit court for defendant implies that the issues of fact in the action were found for defendant. It is not the custom of this court to disturb findings of fact in the lower court, unless unsupported by legal evidence or obviously wrong. The lower court is more likely to know the credibility of the witnesses, and this court does not reweigh conflicting testimony. There was no issue of fact on which defendant did not produce abundant testimony. The preponderance of evidence on every issue of fact is clearly for defendant. The decree for defendant is a decision on the following issues of fact:

1. That the assignment was not executed and delivered to complainant by Dr. Cook.

3. That the answer "No" to question 10, in the applica-

tion as to whether Harvison was addicted to the habitual use of spirituous liquors, was false; that the application suppressed such use and that Harvison was addicted to such use of liquors as to injure and impair his health.

4. That Harvison became as to habits so far different from the condition which he was represented in the application to be in as to make the risk more than ordinarily hazardous.

5. The purchase of the policy by defendant for valuable consideration from Dr. Cook, the beneficiary named in the policy, without notice of Mrs. Cook's alleged claim.

6. That complainant permitted Dr. Cook to sell the policy to defendant for a valuable consideration without notice of the claim asserted here.

7. That Morris did not know of Harvison's habits at the time of the application or of collecting premiums.

8. That complainant did not notify defendant or its agents before the purchase of the policy of her alleged title.

The decision of either No. 1 or Nos. 3 or 4 with No. 7 or of 5 or 6 for defendant is fatal to complainant's case. There is conflict of evidence in each, with preponderance for defendant.

VI.

Harvison was "addicted to the habitual use of spirituous liquors" in August, 1872, at the time of the application for this policy. The answer to question 10 is, therefore, untrue, and by its terms the policy is void.

From 1870 Harvison was in "*the habit*" of occasionally using liquor to excess (R., 92, Ans. 4). From about 1867 he drank pretty regularly as a habit, but previous to that used liquors in moderation (R., 92, Ans. 5.) He drank during the ten years before September, 1877, but only during the latter part of that period to great excess. It resulted in his failing to do business. He was intemperate from 1867 to 1877. (R., 92, Ans. 6.)

In 1878 his wife, Dr. Cook's sister, got a divorce from him

for cruelty and intemperance. (R., 116, Ans. 115; R., 37, Ans. 27.)

Before his death he had dropsy. (R., 55, Ans. 12; R., 67, X 4.)

In 1879 Dr. Goodale, the special agent then investigating these large policies, came to Louisville, and, inquiring as to Harvison, found and wrote to the company that Harvison's wife had obtained a divorce, partly on account of his intemperance (see letters, R., 140 and 141), on the testimony of Dr. Geo. Cook (brother of Mrs. Harvison and of Dr. A. B. Cook) and of Harvison's son and daughter.

In answer to Goodale's statement of these facts, Dr. A. B. Cook admitted that he knew Harvison drank a good deal, but, evidently having prepared for this charge, added that Morris, agent of the company, knew it. (R., 77, top of page.)

Dr. Cook brought his lawyer, Judge Edwards, into the negotiations which ensued, and there were probably a half a dozen interviews, at Cook's office, at the Galt House, where Cook and his lawyer called on Goodale, and at the lawyer's office, the company offering at first $1,500, and finally paying $4,000 and surrendering Cook's notes.

During these negotiations Harvison was in his last illness, and Dr. Cook was attending him in consultation with Dr. Blackburn (R., 35, Cook, 18). It is not pretended that any agent of the defendant saw him then.

During all of these negotiations neither Cook nor his attorney questioned the statements as to Harvison's habits, but, to induce the company to give more money for the policy, Cook insisted that Morris knew Harvison's habits, and his lawyer that the publication in the newpaper of the grounds of divorce was constructive notice of Harvison's habits.

Cook surrendered his policy and got the $4,000 in cash and his notes June 14, 1880.

His son, John A. Harvison, testified:

"Q. State what were the habits of W. G. Harvison as to the use of spirituous liquors during the last ten years of his

life; also before August 31, 1872, and after that time, up to the time of his death.

"A. Well, for three years previous to his death I saw very little of him, and do not know much about it. I do not know what his habits were. For the seven years previous to the last three years of his life he was in the habit of occasionally using spirituous liquors to excess. Prior to August 15, 1872, he used spirituous liquors very moderately.

"Q. State whether or not he drank spirituous liquors regularly as a habit or was intemperate for fifteen or twenty years before September, 1877.

"A. For about ten years previous to that date he drank pretty regularly as a habit, but previous to that date he was a very moderate drinker, and used liquors in moderation.

"Q. State whether or not during the ten years before September, 1877, he drank so as to show the effects; if so, whether or not he was during that period intemperate as to the use of spirituous liquors.

"A. He drank during the ten years, but only to great excess during the latter part of that period. About the only effects noticeable on account of intemperance was failure to do business. I do not know of any bad effects upon his health or system. He was intemperate in the use of spirituous liquors for ten years before September, 1877. (R., 92.)

"Q. 4. Where were you during the year 1872?

"A. In Louisville, Ky.

"Q. 6. Were you in the store with your father during that year?

"A. I was.

"Q. 7. During that year, while you were there with your father in the store, was he a habitual drinker to excess, or to what extent did he drink spirituous liquors then?

"A. He was not a habitual drinker to excess; he drank moderately.

"Q. 8. How long after that was it that he began to drink to excess?

"A. Well, from about that period, as far as I know, to 1877.

"Q. 9. Do you mean that he drank regularly and daily to excess, or that he would occasionally take too much liquor?

"A. Not daily to excess; only occasionally.

"Q. 10. Was his habit of drinking occasionally to excess so pronounced as to be observable by his associates as well as yourself?

"A. I think it was." (R., 93, 94.)

Harvison died August 25, 1880. The seven years in answer 4 above would be 1870–'77. The application was August 15, 1872. This testimony of Harvison's own son shows that from 1870 he was in the habit of occasionally using spirituous liquors to excess; that from 1867 he drank pretty regularly as a habit, and previous to that time was a moderate drinker—used liquors in moderation; that he was intemperate in the use of spirituous liquors from 1867.

That during 1872, which year he fixed as the time that he quit school and was in the store with his father, his father was a habitual drinker; though he did not drink to excess, he drank moderately, and about that time began to drink to excess.

The testimony of the son, who, of course, said as little as possible against the deceased father, tells the common story of a man of intemperate habits, beginning before 1867 to drink regularly, though moderately, the habit growing on him, finally ending in his failing to do business, his partnership dissolving, occasionally drinking to excess, and finally divorce on the evidence of his own children, and then dropsy, and at last death.

There is no direct testimony contradicting this. Dr. Cook (R., 38, Ans. 31) says he was not addicted to drink in 1872, when the policy was taken out. "If he was addicted to drink I did not know it."

Mr. Morris, the agent who took the application, testifies that he never knew or heard of Harvison's habits until 1879 (Ans. 43, R., 100). But this testimony, which admits the possibility, is certainly not as strong as the positive testimony of Harvison's own son to specific facts, and certainly does not make it clear that the circuit court erred in holding that Harvison was addicted to the habitual use of spirit-

uous liquors at the time of the application, and that the answer to question 10 was untrue; that the fact of the habit was suppressed and the policy, therefore, void. Counsel for appellant endeavor to strengthen the effect of Morris' testimony by arguing that Harvison had his office with Morris at the time of the application, and that therefore if Harvison had been so addicted to the use of liquors Morris must have known it. But Morris says that he thinks Harvison did not occupy a desk in his office at that time; that he thinks it was after that time (Ans. 10, 11, R., 105), and Harvison's son stated (Ans. 13, R., 94) that he thought his father occupied a desk in Morris' office "during the year 1872, or very soon afterward, as near as I can recollect;" and his answers on page 93 of the record, 4, 5, 6, quoted above, show that during the year 1872, in which the son quit school, he was in the store with his father; and in answer 15 (R., 94), he says that his father occupied a desk in Morris' office after the failure of the firm of Baird, Harvison & Co., and, in answer 16, that when he had the desk in Morris' office he was engaged in the manufacture of hosiery.

Appellant relies, in the same connection, on Morris' statement that for two or three years he had a business acquaintance with Harvison, but in the same answers Morris shows that he had very little acquaintance with him, and there is nothing to show that Morris' attention was called to this matter, or that he had any reason to notice anything about Harvison's habits. The habitual use of spirituous liquors, whether noticeable to business acquaintances or not, by the terms of the policy, renders the policy void. The case of Jeffries *v.* Life Insurance Company, 7 Wall., 47, on a provision that the policy should be void in case of an untrue answer in the application, or suppression of facts specified in the contract, the court upheld the condition.

Insurance Company *v.* Mahone, 21 Wall., 152, presented the same condition as question 29 in the application in this record (R., 27), and proceeded on the theory that the condi-

tion was valid. (See also Insurance Company *v.* France, 1 Otto, 510.)

VII.

It is not necessary to argue the proposition that if Harvison had the habit charged at the time of the application this application suppressed the fact.

VIII.

The citations in VI, as to Harvison's intemperance, establish also that Harvison did "*become, as to habits, so far different from the condition now*" (then in the application) "*represented to be in as to make the risk more than ordinarily hazardous,*" which, by the terms of the application, part of the contract of insurance avoids the policy.

To what is cited above I add the testimony of A. B. Cook, witness for appellant:

"For some time the assured had been drinking. I saw notice of his divorce for drunkenness. I took the policy to the general agent, stating that Wm. G. Harvison's habits had changed; that he had left the city, and I was afraid I would have trouble about it" (R., 37, Cook, 27).

Dr. Cook says he learned in 1875 that Harvison *had acquired the habit of drinking* (R., 38, Ans. 30). He saw Harvison on the street drinking.

Dr. Frazee, one of the witnesses whom Dr. Cook prepared for the suit, in which he afterwards refused to unite with his wife, said that he saw Harvison several times under the influence of liquor. (R., 53, A. 7.)

All this evidence as to drinking after the application is without contradiction, and counsel offer nothing to meet it, except Morris' statement that he had no knowledge of Harvison's drinking.

The testimony establishes very clearly that such habits made the risk more than ordinarily hazardous.

Dr. Goodale states that he was a practicing physician for

sixteen years; that the habitual use of intoxicating liquors is very injurious to a person's physical condition, liability to disease, and ability to resist or throw off disease; tends to shorten life; that there is a great difference between the risk on one who is temperate and not habituated to the use of spirituous liquors and one who is so habituated; that if a person who is temperate and not addicted to such use changes his habits and becomes so addicted it makes the risk more than ordinarily hazardous, and increases the risk by producing disease, depleting the system, making the person less able to resist disease or recover from disease when ill; that bloating or dropsy in the legs often occurs in men of intemperate habits. (R., 85, 86, Q. 46, 47, 55.)

J. M. Holcombe, secretary of defendant, states that he has studied these questions, and that if Harvison was addicted to the habitual use of spirituous liquors he would have been uninsurable, for the reason that the risk of insuring his life would have been very much increased (R., 137, Ans. 4); that if Harvison had afterward become addicted to the habitual use of spirituous liquors, having been temperate at the time of the application, the risk on his life would have been increased, and his expectation of life diminished, and his chances of dying increased in proportion to the amount of liquors used and the duration of the intemperate habit; that such person is not insurable in any safely managed life insurance company (R., 138, A. 10); that any use of intoxicating drink decreases the chances of life in a healthy person (R., 138, X 5); that such use tends to break down the constitution, and naturally attacks the weakest spot in any person. (R., 139, X 7.)

Dr. Barrow, the medical examiner of defendant, says he has made this a matter of special study, both from reading and observation, and considers the life of any person addicted to the habitual use of intoxicating liquors uninsurable; that he would have considered Harvison uninsurable if he was addicted to the habitual use of spirituous liquor;

that such use would increase the risk and tend to shorten the life; that such person is not insurable in any safely-managed company; that such use would be likely to injure his constitution, render him more liable to contract disease, lessen his powers of resistance to same, and shorten his life. Dr. Barrow states that he has held the position of medical examiner for life insurance for thirty years, and bases his opinion upon forty years of active practice as a physician. (R., 143, 144.)

Dr. Cook had the same impression, if it be true, as he swears in answer 27 (R., 37) that Harvison's habits had changed, and he was afraid he would have trouble about the policy, and thought this so strongly that he says he left the policy to be sent on to the company.

Complainant's witness, Dr. Ronald, is under the impression that at the *post mortem* there was swelling of the legs and feet of the dead man.

Dr. Frazee, witness for complainant, saw Harvison several times under influence of liquor (R., 53, A. 7; R. 55, X 14). Attended him several times as physician in last illness (R., 53, A. 11). He had dropsical effusions in the lower extremities before death (R., 55, X 12), and witness cannot say positively whether his death was caused by the habit of drinking. (R., 53, A. 8.)

Dr. BLACKBURN says: Harvison had dropsy of the lower extremities, and *great trouble with his stomach* (which all the doctors found perfectly healthy at the autopsy). He thought from the dropsy that his liver was affected (R., 67, Ans. 3, 4, 5). To meet this defense, Dr. Cook had the secret *post mortem*, and introduced the doctors who attended it to try to prove, from what they saw at the *post mortem*, that Harvison's habits after the application did not make the risk more than ordinarily hazardous.

He attempts to establish this by proof that *in this particular case* it did not make the risk more than ordinarily hazardous. It seems to me this does not reach the case; that

the condition in the contract, although it refers to "*the risk*,' was based on general principles and not intended to defend, or whether the habit increased the risk in a specific case; that if any change of habits make risks more than ordinarily hazardous it would violate the condition.

But, waiving this proposition, for argument's sake, the medical witnesses do not seriously conflict with our claim that Harvison's habits made the risk more than ordinarily hazardous, as established by the positive testimony for defendant. When we read the testimony of the doctors, in the light of the fact that they were professional brethren of Dr. Cook at Louisville, chosen by him, and attended as witnesses at his request, without subpœna, their statements and the proper inferences from many of their answers support defendant on this point.

Dr. Ronald says that he did not conduct the examination—he was a spectator. (R., 53, X 11.)

"There was some effusion of cerum and bloody matter in the left pleural cavity; the stomach, intestines, liver, and kidneys were in a healthy condition. The right lung was in a complete state of hepatization; * * * there were clots of blood in the pulmonary artery. * * * This, I think, was the *immediate* cause of his death." (R., 50, A. 4.)

"7. From your knowledge * * * and from the autopsy * * * was his death caused directly or indirectly * * * by the habit of drinking spirituous liquors?

"Ans. That is a very difficult question to answer. I can only say that a man who never drank a drop of liquor in his life *might* die under the same circumstances as Mr. Harvison died; then, *one who drank might also die under the same circumstances.* * * * *I cannot say whether such was the cause* of his death. I will add that the liver and stomach being found in a normal condition led me to *suppose* that he did not die from *excessive* use of ardent spirits; though, as I have already said, I could not be certain."

He did not *discover* any signs, &c., which indicated drinking. (R., 50, A. 7 and 8.)

The cross-examination showed that nothing was said as to what fact was to be ascertained (R., 51, X 4); therefore nothing from the autopsy, August, 1880, to the testimony, 1883, three years, to fix the facts on the memory. He says that the swelling of the legs would indicate disease of heart or liver, and his attention was not called to any of the organs as minutely as if he had conducted the examination. (R., 51, 52, A. 9, 10.)

In short, Dr. Ronald, who did not conduct the examination made in 1880, three years before, whose attention was not called to its purpose nor to any of the organs, minutely *thinks* that the organs were natural and finds it difficult to answer whether the death was caused by the habit of drinking spirituous liquors or not. This testimony seems of little value against our positive testimony and against common sense.

So, Dr. FRAZEE says the *immediate* cause of death was the clot, and that was the result of the hepatization of the lungs. The liver *seemed* normal; don't recollect whether the kidneys were examined. He says that when drinking causes disease any organ then disposed to it is more likely to suffer, but he usually expects to find stomach or liver involved (R., 52, Ans. 4 and 6). He had seen Harvison under the influence of liquor. "8. From your knowledge of his habits, * * * of medicine, his condition at the autopsy, * * * and what you saw of him in his last illness, * * * state whether his death was caused, directly or indirectly, &c., &c., by *his habit* of drinking spirituous liquors."

Here even counsel recognized the *habit*, and if the habit did not cause the death there was never a better chance to say so; but Dr. Frazee did not do it, but said:

"Ans. *Before we commence* I want to make an explanation. I am clearly of opinion that *the immediate* cause of Mr. Harvison's death was the clot, * * * but that was the result of the condition of the lungs. What was *the immediate* cause of the condition of the lungs I have no means of knowing. He was absent from here some time; I think as

much as two or three years. I saw him soon after his return. *He was then in a diseased condition* * * * The *immediate* cause I am unable to say. I *have* just my reasons why *I cannot give a positive answer to that question.*"

A person might die from the cause which produced his death (the clot) who did not drink at all. *He discovered* no signs in the liver and stomach which indicated a habit of drinking to *excess.* He saw Harvison a number of times in his last illness as a physician. (R., 52–'3, A. 9–11.)

Dr. MILLER says the clot was the cause of death; he *could find no evidence from the autopsy* that the death was caused by the habit of drinking, and if it had been it would have been *apt to show* in stomach, liver, or kidneys. (R., 63.)

Dr. BLACKBURN says the clot "caused the immediate death." It is his opinion drinking did not *cause the death,* directly or indirectly.

To sum the doctors up, they all agree that the clot was *the immediate* cause of death, and not one declares that drinking did not make the risk more than ordinarily hazardous, but all say that they discovered nothing in the *dead* liver, stomach, or heart to show that drinking injured the man when alive; that they found the *dead* organs *normal.*

The folly of such testimony is exposed in the statement of his attending physician, Dr. Blackburn, that the live man "*had great trouble with his stomach,* took no nourishment" in that stomach which the medical brethren found normal after death, and without anything that they could see to show disease. May we not infer that livers and kidneys which are very sick in a live man may be different in a dead one?

There is no dispute that the habits after the application were as alleged by defendant, and the testimony that this made the risk more than ordinarily hazardous is not overcome by the *post-mortem* testimony.

Harvison was represented in the application as not ad-

dicted to the use of spirituous liquors (Ans. 10, R., 26). The following condition was violated by his subsequent habits.

"Should the applicant become, as to habits, so far different from condition now represented to be in as to make the risk more than ordinarily hazardous * * * will render the policy null and void." * * *

To forfeit the policy under this condition it is not necessary that Harvison should *change*, but that his habits, after the time of this application, should become, or be, so far different from the condition represented in the application as to make the risk more than ordinarily hazardous, and the testimony which we have cited shows that this occurred. Certainly it is not clear that the judgment of the circuit court, that Harvison did violate this condition in the application, is wrong.

IX.

NO ESTOPPEL AGAINST DEFENDANT BY ANY KNOWLEDGE OF HARVISON'S HABITS BY MORRIS. AN UNJUST ATTACK ON GOODALE.

The appellant opposes propositions VI and VIII by claiming that the company's agent, Morris, had knowledge of Harvison's habits. This Morris explicitly contradicts, denying throughout, every statement of Dr. Cook and Mamie Roberts seeking to affect Morris with such knowledge. (Morris, R., 114, Ans. 92 to 96, 98 and 99; R., 115, Ans. 110 to 112; R., 117, 123; R, 120, Ans. 153.)

The depositions of Morris, Holcombe, and Goodman show that the home office of the company had no knowledge whatever of Harvison's habits until a letter of Dr. Goodale (Holcombe, R., 138, Ans. 7; Goodman, R., 145, Ans. 7; letter of Dr. Goodale, R. 140, and the answer of the company, R., 141). These letters were brought in by counsel for complainant on cross-examination. Counsel criti-

cised harshly Dr. Goodale's proposing to defeat this gross fraud by omitting to notify Dr. Cook of the premium falling due. It is plain the policy was fraudulent. It was plain to Dr. Goodale. He proposed to defeat that fraud by omitting the usual notice of premium falling due.

The charge of "swindling" the holder of a fraudulent policy will rank with that of spoiling bad eggs.

In that letter, after detailing what he had learned showing that Harvison's habits were intemperate when the application for the policy was made and grew worse till 1877, when his wife got a divorce by reason of intemperate habits, &c., which showed that the application was false and fraudulent representing Harvison as insurable when he was not so, he said:

"At any rate, I do not think the company, under the circumstances, are under obligation to renew it, and think the renewal should be withheld. * * * My plan would be not to say a word to Dr. Cook about this drinking, * * * but keep quiet and allow it to lapse, and then it will be ended, and our excuse for not notifying him of payment will be that the policy was considered forfeited by reason of misrepresentations. * * * I think I did a good day's work yesterday in the Harvison case."

This is the letter on account of which counsel attack Dr. Goodale as trying to swindle Dr. Cook. If it was wrong to do this, that wrong may be criticised, but if it was not wrong the critic, not his victim, must be condemned.

The Supreme Court of the United States has said that it is not wrong. In Thompson *vs.* Ins. Co., 104 U. S., 258, the Court said, in the case of a policy with forfeiture provisions similar to that at bar:

"The assured knew, or was bound to know, when his premiums became due. * * * The reason why the insurance company gives notice * * * of the time of payment of premiums is to aid their memory and stimulate them to prompt payment. *The company is under no obligation to give such notice.*" * * *

If the company was under no obligation it had the right to omit the notice, and if it had that right it was not infamous for Dr. Goodale to advise exercising it.

X.

THE POLICY WAS ASSIGNED TO THE COMPANY FOR A VALUABLE CONSIDERATION WITHOUT NOTICE OF COMPLAINANT'S ALLEGED TITLE

By Dr. Cook, in the presence of his wife, on June 14, 1880, during the lifetime of Harvison, for four thousand dollars in cash, and the surrender of Cook's unpaid notes for premiums on the policy, amounting to $2,660, which is evidenced by a written endorsement on the policy. (R., 25.)

Dr. Cook, witness for his wife, admits the payment of the money and the surrender of the notes and the transfer of the policy. He was the beneficiary named in the policy, the only person to whom the company had any reason to look in the matter, unless it had notice of a real and a valid claim of Mrs. Cook to the policy, such that Dr. Cook could not dispose of it. Unless there was such notice no question can be made that Dr. Cook and the company could end the policy by any settlement they chose to make. Dr. Cook, indeed, has not sought by any pleading to attack that settlement. As between him and the company it stands as a valid settlement. He only attacks it under his wife's name.

The claim that defendant had notice of Mrs. Cook's alleged title depends solely on the testimony of her husband, sister, and daughter, in 1883, as to *conversations* in 1880, and that testimony is directly contradicted by Dr. Goodale and Mr. Morris, disinterested witnesses, and by all the circumstances and probabilities of the case.

Dr. Goodale's narration of the interview is plain, sensible, consistent, and has "*the persuasive flavor of intrinsic probability.*" It is confirmed by the fact that Dr. Goodale, an experienced special agent of an insurance company, a man of mature

years, actually paid in money four thousand dollars and nearly three thousand dollars in notes for the policy, in the lifetime of Harvison. It is inconceivable that such a man would pay that much money in the face of any such declarations as Mrs. Cook is alleged to have made.

Morris' agency was not such that talk to him about the assignment was any notice to the company.

The testimony of Mamie Roberts can have little or no weight. She was seventeen when she testified in 1883. At the time the policy was bought in, in 1880, she was fourteen. She rattles off a story in which long law terms and technical expressions are used as glibly as if they were every-day words. Her testimony does not agree with Dr. Cook's. She represents Goodale as offering twenty-five hundred, then three thousand, and then four thousand dollars (R., 69, Ans. 7) on the day the policy was surrendered, when, as a fact, two days before, on Saturday, Dr. Goodale had offered three thousand, and Cook had consented to take four thousand, and it was agreed to leave it open until Monday. (R., 79.)

On June 14th, when the policy was surrendered, the only question was whether Dr. Cook would take $4,000 as he had agreed. No less sum was mentioned. Goodale began by asking if he would take less, and then offering $4,000.

She lost the thread of her talk at one time and asked *where she had left off*, and when she was asked if she had done this, at first denied, but finally admitted this. She testified that she was in her sixteenth year when she heard Judge Edwards and Morris' interview of February, 1880, when, if it is true that she was seventeen in 1883, when she testified, she could have been but fourteen at the time of that interview. She is explicitly contradicted by Mr. Morris, a man of mature years (who is not interested nor connected with the company), and is, of course, under the influence of her mother.

The statements of Dr. Cook have been already shown un-

reliable, and his testimony can have no weight against Dr. Goodale's reasonable narration of the transaction.

The statement of Mrs. Cook's sister, Mrs. Hickman, that in 1883 she remembers that, while she was standing listening in the hall upstairs, in February, 1880, her sister used the word "assigned," and told Mr. Morris that the policy was "assigned" to her, depends for any force on the expression of "assignment," which was very certain to have been suggested to her by Mrs. Cook, and it is not certain that memory could have recalled it. It is of little weight and could not reasonably outweigh the $4,000 circumstance, which conflicts with it.

XI.

MRS. COOK IS ESTOPPED TO SET UP THIS CLAIM.

She was present when Cook sold the policy to the company for $4,000 and when he got and indorsed the draft for the money (Cook, R., 41, X 17–21; R., 40, X 9), and knew he got the money on the draft. (R., 40, X 12.)

Judge Edwards says that during the time of his interviews about the surrender of the policy Mrs. Cook talked to him several times on the subject (R., 58, top of page 57, Ans. 7). He advised *Dr. Cook* to accept the amount offered by Morris, he thinks $2,500 or $3,000, "under all the circumstances from the facts and lights he then had, and he thought Cook would do so and so told Morris, but he did not."

Judge Edwards (R., 58, 59, Int. 8 and Ans.) says he knew from her statement that she consulted counsel before the surrender as to her course in regard to the policy in case of its sale or surrender to the company.

R., 59: "In all the matters Judge Edwards attended to as attorney for Dr. Cook *Mrs. Cook always took a deep interest, and came to see me frequently in regard thereto*," and with reference to the policy she talked to him a great deal, not less than *twenty* interviews. He asked her to consult other counsel, she and he differed so widely on the subject.

She admitted to Goodale that Dr. Cook owned the policy and let him receive the payment (R., 80, Ans. 13). She had urged Dr. Cook to demand more money, but after he decided to adhere to his offer she no longer opposed (R., 81, Ans. 21.) She laid no claim to it; said it was Dr. Cook's. (R., 81, Ans. 22.)

XII.

We shall not endeavor to review at length the arguments for appellant, but note as novel the argument that giving Dr. Cook money for the policy estops us from making the defense that the policy was void. On page 20 of appellant's brief it is claimed that Goodale's statement, in answer to Ques. 23, R., 81, that they had no information from Mrs. Cook of any right to the policy, is shown to be a deliberate falsehood by the testimony of Judge Edwards, Mrs. Hickman, and Dr. Cook. This is wholly unjust; neither Dr. Cook nor anybody else pretends that Mrs. Hickman or Judge Edwards were present at the time Goodale speaks of in 22, the time the policy was surrendered.

Nor is Goodale's question to Mrs. Cook, as to whether her name appeared in the policy, inconsistent with the testimony. He said that because of her dictating way. It was one of those questions that a man asks, not for information, but as a rebuke.

Morris does not swear, as stated on page 22, that if Harvison had been a drinking man in 1872 he would have known it; nor is it true that he is eager to make him out a drunkard now.

Morris does not support the claim that Harvison was a drinking man, but, on the contrary, always said that he had no knowledge of his habits, and supposed his habits all right. The claim on page 23, of the conflict between Goodale and Morris as to Mrs. Cook's claims, is not well founded, for nobody claims that Goodale and Morris were ever present together on any occasion when Mrs. Cook was present.

He did not admit that Mrs. Cook asked him why her name did not appear in the policy; he said she asked him why *he did not have it* appear.

When the whole testimony of the two witnesses, Dr. Goodale and Mr. Morris, is heard, we feel confident that it will commend itself; that it is consistent, in accordance with the probabilities, and truthful. The record certainly furnishes no excuse for the harsh comments upon either of them. They are men of mature years, of honorable character, and have spoken honestly and according to their recollection.

The policy is not left blank after the word "found" (fol. 65). The word "untrue" is omitted in the transcript, by error, shown by the certified copy of the policy exhibited on the hearing, and the correct copy filed.

It does not seem necessary to go through the long brief exposing all of the mistakes, in citation from the record, application of authorities, and statement of facts. That alone would take a good-sized brief, and would waste valuable time.

IN CONCLUSION.

The original application was untruthful, and attempted to insure as a sound man one who had drunk till he was just about to fail in business.

Dr. Cook frequently manifested his uneasiness about it, and when he saw that the fraud was discovered simply fought to get back as much money as he could make out of the company's dislike to risk the mercy of a jury in a life-insurance case.

The second attempt at fraud, based on the secret assignment from husband to wife, was evidently Mrs. Cook's scheme, in which she made her husband a strong helper.

I submit that it has not been made clear that the decision of the circuit court on any of the questions of fact was wrong. It seems clear that it was right on each and all and on the law of the case.

If the answer to question 10 was untrue; if Harvison was addicted to the use of spirituous liquors; if he ever became so addicted to that use as to make the risk more than ordinarily hazardous; if the company bought the policy, standing in Dr. Cook's name, without notice of Mrs. Cook's pretended equity; if the allegation of the making the assignment to Mrs. Cook is not believed; or if Mrs. Cook permitted the company to pay the money for the policy and did not show the claim to it now set up; in the event that on either one of those questions of fact it is not clear that the circuit court was wrong in finding for defendant, I submit that defendant is entitled to have the judgment below affirmed; and it seems to me that upon the whole case the decided preponderance of evidence on every one of these issues is for defendant. Surely more cannot be said for appellant than that the evidence was conflicting, in which event it is not the practice, I submit, to disturb the lower court's finding of facts.

Here is the original insurance contract, payable to Dr. Cook, surrendered by him to the company by the written endorsement signed by him, compromising a disputed policy on which $17,340 could be claimed at Harvison's death, whenever it should occur, for $4,000 in cash, a fair and a very liberal payment for a policy obtained by fraud, of which the divorce suit furnished a guarantee of the necessary evidence, and on which, by the contract, every cent of premiums paid was forfeited.

It is attempted here to treat all this, the writings, the large payment, as nothing, because of the production of a secret writing between husband and wife, proved only by the husband and attempted to be supported by the testimony of Cook, who is keeping that $4,000, fraudulently obtained by him according to his story, and of his wife's little girl and sister as to the *words* that she used in conversation three years before, which testimony is explicitly contradicted

by two reputable disinterested men of mature years and character.

The chief witness is a doctor of 29 years practice, who is keeping $4,000, and the notes which he admits he got for his surrender of a policy which he now pretends was not his to surrender when he got the money. He was anxious to sell, and it was either because he had then planned this scheme to get $4,000 for his surrender of the policy and then sue on it for his wife, or because he was conscious of the fraud in the application, and was afraid he would get nothing, and lose all he had invested in the venture.

It cannot be reasonably asked that nearly $20,000 shall be taken from defendant, in the face of the writings, on so unsubstantial a ground as the testimony of such a man and a child and Mrs. Cook's sister as to their memory that three years before Mrs. Cook used the words "*assigned or assignment*" in conversations with Dr. Goodale and Mr. Morris, especially when the principal witness is confessedly a dishonest man, who obtained a large sum of money fraudulently, and still holds it. It would be letting too much depend on trifles. $17,340 and interest is not a matter which can be blown about by the breath of such witnesses.

It seems to me very clear that Mrs. Cook could not be assignee of this policy, because she had no insurable interest in Harvison's life, and therefore could not recover even if all of the facts were found for her.

I submit that appellee is entitled to have the decree affirmed.

Respectfully submitted,

AUGUSTUS E. WILLSON,
For Appellee.

AUTHORITIES CITED FOR APPELLEE.

Warnock *vs.* Davis, 104 U. S., 775.
Busye *vs.* Adams, 81 Ky., 368.
Kelehen *vs.* Bedford, 13 Wallace, 413.
Cassell *vs.* Cowell, 11 Wheat., 134.
Moore *vs.* Page, 111 U. S., 419.
Ky. Code, § 606–1.
Rev. Stat. U. S., § 658.
Stein *vs.* Bowman, 13 Pat., 221.
Lucas *vs.* Brooks, 18 Wall., 452.
Ruse *vs.* Mutual, &c., Co., 23 N. Y., 516.
Fowler *vs.* N. Y., &c., Co., 26 N. Y., 424.
Murdock *vs.* Chenango, &c., Co., 2 Comstock, 210.
Thompson *vs.* N. Y. Co., 104 U. S., 258.